TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 163.

EAU CLAIRE NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

RALPH W. JACKMAN, AS TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, A BANKRUPT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED DECEMBER 8, 1905.

(20,013.)

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1a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the supreme court of the State of Wisconsin, being possessed of the record and proceedings, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plea rendered in the circuit court for the county of Eau Claire in the State of Wisconsin, and affirmed upon appeal by the supreme court of said State, which is in said supreme court before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ralph W. Jackman, as Trustee of the Estate of John H. Young, a bankrupt, plaintiff, and Eau Claire National Bank, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the defendant, as by his complaint appears. We being willing that error, if any, hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you if judgment be thereon given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ; so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court,
2a that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States this 4th day of November, 1905.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States this 4th day of November, 1905.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

F. W. ——,
Clerk of the Circuit Court of the United States
for the Western District of Wisconsin.

2½a STATE OF WISCONSIN, *Supreme Court, ss:*

The return to the within writ appears by the schedule hereto annexed.

The return of the Justices of the Supreme Court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

2¾a [Endorsed:] United States Supreme Court Eau Claire National Bank plaintiff in error, *vs.* Ralph W. Jackman, defendant in error. Writ of Error. Original.

3a In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,

vs.

EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

To the Honorable John B. Cassoday, Chief Justice of the Supreme Court of the State of Wisconsin:

The petition of the Eau Claire National Bank, defendant and appellant in the above entitled cause, respectfully represents that it is a corporation organized and existing under and by virtue of the laws of the United States, having its banking house and place of business located in the city of Eau Claire, in Eau Claire County, Wisconsin; that the above named plaintiff commenced the above entitled action in the circuit court of Eau Claire County, Wisconsin, against the defendant, and filed his complaint therein, alleging among other things that John H. Young, the said bankrupt, had transferred to the defendant certain logs and lumber, that said transfer constituted a preference within the meaning of an act of Congress, approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," known as the Bankrupt act, and said plaintiff in said action demanded judgment for the value of said property alleged to be transferred; that the defendant interposed a demurrer to said complaint on certain grounds therein alleged, including among others, the ground that said complaint did not state facts sufficient to constitute a cause of action, which demurrer was overruled by the said circuit court; that there-

4a upon the said defendant answered the said complaint, and issue was duly joined and the cause proceeded to trial in said circuit court upon the merits, and judgment was rendered for, and entered in favor of the plaintiff and against the defendant on the 18th day of September, 1903, for six thousand, eight hundred forty three and 77/100 dollars ($6843.77) damages and costs, whereupon the defendant appealed from said judgment to the supreme court of the State of Wisconsin, it being the highest court of law or equity in said State having jurisdiction of such cases, which said court on the 23rd day of June, 1905, affirmed the decision and judgment of

said circuit court; that thereupon said defendant filed in said court its motion for a rehearing, and thereafter and on the 3rd day of October, 1905, the said motion for a rehearing was denied; that the records of the proceedings of said cause are now in the custody of said supreme court; that the aforesaid judgment of said supreme court of the State of Wisconsin became, and is now, final and from which your petitioner has no redress except by writ of error issued to said supreme court; and your petitioner further alleges that there was drawn in question in said action the construction of said statute and act of Congress, and the decision in said supreme court was against the title, right, privilege and exemption set up and claimed by said defendant under said statute, and that said judgment of said supreme court aforesaid, invoives the construction of said act of Congress under which your petitioner claims its title, right, privilege and exemption aforesaid, and which title, rights, privilege and exemption were decided adversely to it by said judgment, as will from the record therein more fully appear; that certain errors were committed to the prejudice of said petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition; that your petitioner hereby presents a good and sufficient bond and prays that the same may be approved, and prays that a writ of error may issue in this behalf to the United States
5a Supreme Court for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said United States Supreme Court, that said bond be approved and that your Honor sign the citation here presented, and your petitioner will ever pray.

EAU CLAIRE NATIONAL BANK,
Petitioner,
By WICKHAM & FARR, *Its Attorneys.*

5½a [Endorsed:] In Supreme Court, State of Wisconsin. Ralph W. Jackman *vs.* Eau Claire National Bank. Petition for Writ of Error. Original. Filed Nov. 2, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

6a In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

On reading and filing the petition for a writ of error to the supreme court of the United States in this cause, and it appearing that the defendant has filed an assignment of errors,

Ordered, that the writ of error be allowed on defendant's filing a bond according to law in the sum of ten thousand dollars ($10,000), which shall operate as a supersedeas bond.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of Wisconsin.

Dated Nov. 3, 1905.

6½a [Endorsed:] In Supreme Court, State of Wisconsin. Ralph W. Jackman *vs.* Eau Claire National Bank. Order Allowing Writ of Error. Original. Filed Nov. 2, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

7a STATE OF WISCONSIN:

In Supreme Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

STATE OF WISCONSIN, *Dane County, ss:*

Burr W. Jones being first duly sworn on oath deposes and says that on the 6th day of November, 1905, at Madison, Wisconsin, he duly served the citation hereto annexed in the above entitled action upon Ralph W. Jackman, Trustee of the Estate of John H. Young, a bankrupt, the plaintiff in said action, by delivering to and leaving with said Ralph W. Jackman at his office in Madison, Wisconsin, a true copy of said citation, and by showing him the original hereto annexed and the signature of John B. Cassoday, Chief Justice of Supreme Court of Wisconsin; and deponent knows the said Ralph W. Jackman so served to be the trustee of said estate and the plaintiff in said action.

BURR W. JONES.

Subscribed and sworn to before me this 6th day of November, 1905.

[Seal of W. D. McCue, United States Commissioner, Western District of Wisconsin.]

W. D. McCUE,
U. S. Commissioner, Western District Wisconsin,
Notary Public, Dane County, Wisconsin.

8a The United States of America to Ralph W. Jackman, trustee of the estate of John H. Young, a bankrupt, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at Washington, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein the Eau Claire National Bank is plaintiff in error, and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf, which said writ and this citation are made returnable within thirty days from the date hereof.

Witness the Honorable John B. Cassoday, Chief Justice of the Supreme Court of the State of Wisconsin, this 3 day of November, 1905.

JOHN B. CASSODAY,
Chief Justice of Supreme Court of Wisconsin.

8½*a* [Endorsed:] United States Supreme Court. Eau Claire National Bank, plaintiff in error, *vs.* Ralph W. Jackman, defendant in error. Citation. Original. A true copy of the within citation has this day been left with me and due service thereof is hereby admitted November —, 1905. Filed Nov. 2, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

9*a* In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

Know all men by these presents that we, Eau Claire National Bank, a banking corporation organized under the laws of the United States, as principal, and William K. Coffin and Charles W. Lockwood, as sureties, are held and firmly bound unto the defendant, Ralph W. Jackman, trustee of the estate of John H. Young, a bankrupt, in the full and just sum of ten thousand dollars ($10,000.00) to be paid to the said defendant, his certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of November in the year of our Lord one thousand nine hundred and five.

Whereas, lately in the circuit court of Eau Claire County, State of Wisconsin, in a suit pending in said court between Ralph W. Jackman, as trustee of the estate of John H. Young, plaintiff, and Eau Claire National Bank, defendant, a judgment was rendered against the said Eau Claire National Bank, which judgment upon appeal by the said Eau Claire National Bank therefrom has recently been affirmed by the supreme court of the state of Wisconsin, and the said Eau Claire National Bank having obtained a writ of error to reverse the judgment in the aforesaid suit, and a citation
10*a* directed to the said Ralph W. Jackman, trustee of the estate of John H. Young, a bankrupt, citing and admonishing him to be and appear at the supreme court of the United States to be holden at Washington within thirty days from the second day of November, 1905.

Now, the condition of the above obligation is such, that if the said Eau Claire National Bank shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said

plea good, then the obligation to be void, else to remain in full force and virtue.

EAU CLAIRE NATIONAL BANK, [SEAL.]
By W. K. COFFIN, *President.*
CHARLES W. LOCKWOOD, *Cashier.*
WILLIAM K. COFFIN. [SEAL.]
CHARLES W. LOCKWOOD. [SEAL.]

Signed, Sealed and Delivered in Presence of
JAMES WIC-HAM.
F. R. FARR.

STATE OF WISCONSIN, *Eau Claire County, ss:*

William K. Coffin and Charles W. Lockwood each being first duly sworn, doth each for himself depose and say that he is one of the sureties who signed the above obligation; that he resides in Eau Claire County, Wisconsin; that he is worth the sum of twenty thousand dollars ($20,000) in property not by law exempt from execution over and above his debts and liabilities.

WILLIAM K. COFFIN.
CHARLES W. LOCKWOOD.

Subscribed and sworn to before me this 2nd day of November, 1905.

[SEAL.] FRANK R. FARR,
Notary Public, Eau Claire County, Wisconsin.

My commission expires — ——.

I hereby approve the foregoing bond as to form and the sufficiency of the sureties.

JOHN B. CASSODAY,
Chief Justice of Supreme Court of Wisconsin.

Dated, November 3, 1905.

10½*a* [Endorsed:] Copy. In Supreme Court, State of Wisconsin. Ralph W. Jackman, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent, *vs.* Eau Claire National Bank, Defendant and Appellant. Bond.

11*a* In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

The defendant Eau Claire National Bank, having applied for a writ of error to review in the supreme court of the United States the judgment rendered against it in this cause, and having filed an as-

signment of errors, hereby prays that said judgment may be reversed, annulled and held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

EAU CLAIRE NATIONAL BANK,
By WICKHAM & FARR, *Its Attorneys.*

11½*a* [Endorsed:] Original. In Supreme Court, State of Wisconsin. Ralph W. Jackman, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent, *vs.* Eau Claire National Bank, Defendant and Appellant. Prayer for Reversal. Filed Nov. 8, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

12*a* In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

Assignment of Errors.

Now comes the defendant, the Eau Claire National Bank, in the above entitled action and in connection with its petition for a writ of error makes the following assignment of errors and avers that in the record and proceedings in said action and in the judgment therein, there is manifest error to the great damage of the defendant in this, to wit:

First. That the supreme court of the state of Wisconsin erred in determining that the plaintiff's complaint therein stated a cause of action, and in refusing to reverse the judgment rendered in plaintiff's favor in the circuit court of Eau Claire County, Wisconsin, for the failure of said complaint to state facts sufficient to constitute a cause of action.

Second. That said supreme court of the State of Wisconsin erred in determining that the defendant, Eau Claire National Bank, was liable in said action for the value of the logs and lumber described in the plaintiff's complaint to the extent of the chattel mortgage interest of the defendant therein.

Third. That said court erred in determining that the defendant was liable in said action for having received as a preference, contrary to the provisions of Section 60*a* and Section 60*b* of the Bankrupt Act of July 1, 1898, as a portion of its chattel mortgage in-
13*a* terest in said logs, the sum of $1335.62 as the proceeds of the sale of the portion of said logs known as the "Up River logs," on which logs said defendant never held any chattel mortgage and which logs were never transferred to said defendant.

Fourth. That said court erred in determining that the defendant was liable in said action for the value of those certain notes and moneys it had received for which the judgment in said action was rendered against it, as a preference, under the provisions of said

Bankrupt Act, although the plaintiff trustee had not elected to avoid such preference by bringing suit to recover the same and had not elected to avoid such preference in any manner whatever.

Fifth. That said court erred in determining that in order to ascertain whether or not the defendant was liable for having received a preference under the provisions of said Bankrupt Act, it was immaterial whether or not the defendant and the other creditors of the bankrupt were creditors of the same class, and said court erred in refusing to reverse said judgment because of the error of said circuit court in charging the jury that all the creditors of said bankrupt were creditors of the same class.

Sixth. That said court, in determining that the defendant had reasonable cause to believe that a preference was intended, erred in the construction of said Bankrupt Act in the following respects:

(*a*) In determining that where the effect of the enforcement of a transfer from an insolvent debtor is to enable any of his creditors to obtain any portion of his debt, and that transfer is followed within four months by the commencement of bankruptcy proceedings, that such a transfer would necessarily enable such creditor to obtain a greater percentage of his debt than other creditors of the same class, and would constitute a preference within the meaning of said Bankrupt Act;

(*b*) In determining that although the effect of the enforce-
14*a* ment of the transfer in question did not operate to give the defendant a greater percentage of its debt than other creditors of the same class, that never-the-less such transfer constituted a preference within the meaning of said Bankrupt Act;

(*c*) In determining by such rules of construction of said Bankrupt Act that the evidence was sufficient to sustain the finding that the defendant had reasonable cause to believe that a preference was intended, whereas under a proper construction of said Bankrupt Act, it appears by the uncontroverted evidence that said defendant did not have reasonable cause to believe that a preference was intended.

Seventh. That said court erred in determining that the defendant having received a preference which was voidable by the trustee, was for that reason liable in said action for the full value of such preference so received, in an amount in excess of what was necessary to pay all the other creditors of said bankrupt.

Eighth. That said court erred in determining that the defendant was liable to the plaintiff trustee for moneys required by said trustee to pay claims of fictitious creditors whose claims were not proven by the evidence and claims of creditors who had themselves received preferences and in giving judgment against defendant therefor.

Ninth. That said court erred in refusing to limit the recovery against the defendant to such sum as should be sufficient after the payment of expenses and costs, to pay all the other creditors of the bankrupt whose claims were provable and proven and entitled to be allowed under the provisions of the Bankrupt Act.

Tenth. That said court erred in affirming the judgment rendered against the defendant in said action, and in refusing to reverse said judgment.

15a Eleventh. That said court erred in refusing to determine that the defendant was entitled to judgment and in refusing to direct judgment to be entered in its favor.

WICKHAM & FARR,
Attorneys for Defendant.

15½a [Endorsed:] In Supreme Court, State of Wisconsin. Ralph W. Jackman *vs.* Eau Claire National Bank. Assignment of Errors. Original. Filed Nov. 2, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

16a–1 Pleas before the supreme court of the State of Wisconsin at a term thereof begun and held at the capitol, in Madison, the seat of government of said State, on the second Tuesday, to-wit, the tenth day, of January, A. D. 1905.

Present: John B. Cassoday, Chief Justice; John B. Winslow, Roujet D. Marshall, Joshua Eric Dodge, Robert G. Siebecker, and James C. Kerwin, Justices; Clarence Kellogg, clerk.

Be it remembered that heretofore, to-wit: on the twelfth day of December, in the year of our Lord one thousand nine hundred and three, came into the office of the Clerk of the Supreme Court of the State of Wisconsin, Ralph W. Jackman, trustee, &c., and also came the Eau Claire National Bank, and filed in said court their certain notices of appeal and undertakings on appeal, according to the statute in such case made and provided, and also the return to such appeals of the clerk of the circuit court of Eau Claire county in said state, in the words and figures following, that is to say:

* * * * * * *

2 STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

Now comes the above named plaintiff, by Frawley, Bundy & Wilcox, his attorneys, and for a cause of action herein shows to the court and alleges:

That heretofore and on the 7th day of June, 1902, John H. Young of Eau Claire, Wisconsin duly filed his petition in the United States District Court for the Western District of Wisconsin praying that he be adjudged a bankrupt, pursuant to act of Congress and that pursuant to such petition said John H. Young was by said court on that day duly adjudged to be a bankrupt; that thereafter and on the 23rd day of June, 1902, this plaintiff was duly elected and appointed by the creditors of said John H. Young, as trustee in said bankruptcy

proceedings and such election was duly approved by Hon. H. M. Lewis, referee in bankruptcy, before whom said proceedings were pending; that thereupon plaintiff duly qualified as such trustee by giving the bond required by said United States District Court and taking the oath required by law and entered upon his duties as such trustee, and brings his action in such capacity.

That the Eau Claire National Bank is, and during all the times hereinafter mentioned was a banking corporation, organized
3 and existing under and by virtue of the laws of the United States relating to National Banks.

Plaintiff further alleges that during the four months immediately preceeding the filing of the petition aforesaid in the United States District Court for the Western District of Wisconsin said John H. Young was the owner and in possession of certain personal property, to wit: Certain Lumber, shingles and lath located at Cadott, Chippewa County, Wisconsin, and certain logs located in, on and near to the Yellow River and Chippewa River in said Chippewa County, Wisconsin, all of which property was during all of said time reasonably worth the sum of thirty-five thousand dollars. That the value of all other property owned by said John H. Young during the said time which was not by law exempt from execution did not exceed the sum of five hundred dollars.

Plaintiff further alleges that on the 10th day of February, 1902, said John H. Young was wholly insolvent and was on that day owing debts which largely exceeded the value of all property by him then owned, which fact was well known to said John H. Young and to said defendant. That the aggregate amount of the indebtedness of the said John H. Young on said day was substantially Forty thousand dollars, and the total value of all property then owned by him, at a fair valuation, was substantially thirty-five thousand dollars. That on said 10th day of February, 1902, said Young was indebted to the defendant in the sum of twenty-seven thousand dollars for moneys borrowed from time to time during a period of about two years previous to that date.

Plaintiff further alleges that on the said 10th day of February, 1902, the said John H. Young, being then wholly insolvent, made and executed to the defendant herein a certain chattel mortgage on 2,100,000 feet of saw logs to secure the sum of fifteen thousand nine hundred dollars, then owing to said defendant from said John H. Young, and on the same day made and executed a second
4 chattel mortgage to the defendant transferring one million feet of lumber, about six hundred thousand shingles and about two hundred thousand lath, which said mortgage was given to secure the sum of eleven thousand and one hundred dollars, then by said John H. Young owing to said defendant. That the indebtedness secured by said mortgages existed long prior to the said 10th day of February, 1902, and the property so transferred constituted substantially all of the property then owned by said John H. Young not by law exempt from sale on execution, all of which facts were well known to said defendant an its officers and agents. That the effect of the enforecement and foreclosure of said mortgages

will be to enable the defendant herein to obtain a much larger percentage of its debt than will the other creditors of said Young in the same class as defendant. That said mortgages were given by the said Young and taken by the said defendant for the sole purpose of hindering and delaying the other creditors of the said Young, and was executed and received for that purpose. That the said defendant herein and its officers, at the time of executing and giving the said mortgages, to wit: On the 10th day of February, 1902, had reasonable cause to believe that the same were given with the intention to give the said defendant a preference over the other creditors, and well knew that such mortgages were executed for the sole purpose of giving such preference.

Plaintiff further alleges that the Waters Clark Lumber Company is a duly organized corporation of the state of Minnesota, and that D. S. Clark, of Eau Claire, Wisconsin is president thereof, and is also a director of defendant, Eau Claire National Bank, of which W. K. Coffin is cashier and managing officer. That after execution of said mortgages and on or about the 20th day of March, 1902, said W. F. Coffin, acting for and in behalf of the defendant herein, requested the said John H. Young to transfer to the Waters Clark Lumber Company for the benefit of the defendant, all of the property embraced and mentioned in said chattel mortgages together with certain other property. That pursuant to such request, and at the special instance and request of the defendant as mortgagee, said John H. Young did on or about the 10th day of March, 1902, transfer by absolute bills of sale to said Waters Clark Lumber Company all of the property mentioned and described in said chattel mortgages, together with certain other saw logs then owned by said Young, which property so transferred was then, ever since has been and now is of the reasonable value of thirty-five thousand dollars. That immediately on the execution of said bills of sale said Waters Clark Lumber Company, acting, as the plaintiff is informed and believes, pursuant to directions by and in behalf of the defendant, took possession of all the property so transferred and thereafter sold the same and applied the proceeds to the payment of the indebtedness secured by said mortgages. That at the time of making said bills of sale the said Waters Clark Lumber Company and the defendant, and their officers and agents, well knew that the property so transferred constituted all of the available assets of the said John H. Young, and that the result of such transfer and the appropriation of the proceeds thereof would result in the other creditors of said Young loosing all of their indebtedness. That the said Waters Clark Lumber Company, acting as the nominal vendee of said property, was in reality acting as trustee for the defendant herein, and made such pretended purchase with the understanding and agreement with the defendant and said Young that it would account to said defendant for the proceeds of the property transferred to the amount of its indebtedness, and that any sums realized in excess of said indebtedness would be paid to said Young. That said bills of sale were not executed as provided by Chap. 80 R. S. Wis. for the year 1898 in that the said Waters Clark Lumber Company

was not a resident of the State of Wisconsin, and no bond
6 was given as required by Section 1694 R. S. Wis. That except as to said agreement on the part of said Waters Clark Lumber Company to pay said indebtedness no consideration was paid by it for said property; that at the time of the transfer of such property amounting to thirty-five thousand dollars nothing was paid to said Young therefor. That by reason of the collusive arrangement and agreement aforesaid, and by means of the said two chattel mortgages and bills of sale, the defendant herein has within four months prior to June 7th, 1902, appropriated to the payment of its indebtedness substantially all of the property of said Young, which property was at the time of and at all times since the date of such transfer has been and now is reasonably worth the sum of thirty-five thousand dollars. That there is no other property in the possession of plaintiff as such trustee or belonging to the said John H. Young out of which the other creditors of said Young can be paid, and that it is necessary, to enable plaintiff to pay anything to the other creditors, to recover from the said defendant the value of the property so by it appropriated by means of said transfer.

Wherefore plaintiff prays judgment against the said defendant for the sum of thirty-five thousand dollars, together with his costs and disbursements herein.

FRAWLEY, BUNDY & WILCOX,
Attorneys for Plaintiff.

* * * * * * *

7 (Endorsements:) Original. No. —. Circuit Court, Eau Claire County. Ralph W. Jackman, trustee, &c., *v.* Eau Claire National Bank. Summons and Complaint. Served July 7, 1902. Frawley, Bundy & Wilcox, Attys. for Plaintiff, Eau Claire, Wis. Circuit Court, Eau Claire County. Filed Aug. 22, 1902, George J. Losby, Clerk. Filed Dec. 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

8 Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The above named defendant by Wickham & Farr its attorneys, demurs to the plaintiff's complaint on the following grounds:

First: Said defendant demurs to said complaint, on the ground that it appears upon the face thereof, that the court has no jurisdiction of the subject of the action.

Second: Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that the plaintiff has not legal capacity to sue, in this, that said complaint fails to allege that any authority or permission was given to the plaintiff to bring this suit.

Third: Said defendant demurs to said complaint on the ground

that it appears upon the face thereof, that there is a defect of parties plaintiff and defendant, in this, that the plaintiff failed to join John H. Young as a party plaintiff, and failed to join the Waters-Clark Lumber Company as a party defendant.

Fourth: Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that said complaint does not state facts sufficient to constitute a cause of action.

WICKHAM & FARR,
Defendant's Attorneys.

(Endorsements:) Copy. Circuit Court, Eau Claire County. Ralph W. Jackman, trustee of the estate of John H. Young, bankrupt, Plaintiff, *vs.* Eau Claire National Bank, Defendant. Demurrer. Circuit Court, Eau Claire County. Filed Aug. 22, 1902. George J. Losby, Clerk.

9 STATE OF WISCONSIN, *Eau Claire County, ss:*

L. M. McCumber being first duly sworn, says, that on the 28th day of July, 1902, she duly served the within demurrer on Frawley, Bundy & Wilcox, attorneys for plaintiff, by leaving a copy thereof at their office, in the city of Eau Claire, with C. T. Bundy, one of the members of said firm of Frawley, Bundy & Wilcox.

L. M. McCUMBER.

Subscribed and sworn to before me, this 28th day of July, A. D. 1902.

[NOTARIAL SEAL.] F. R. FARR,
Notary Public, Eau Claire County, Wisconsin.

(Endorsements:) Circuit Court, Eau Claire County. Filed Aug. 22, 1902. George J. Losby, Clerk. Filed December 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

10 STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, D-fendant.

The above entitled action being at issue on the complaint of the plaintiff and the demurrer of the defendant thereto; and the argument of said demurrer having come on to be heard on due notice, and being argued by counsel for the respective parties, now, on motion of Frawley, Bundy & Wilcox, attorneys for the plaintiff,

It is ordered that the demurrer of the defendant to the complaint of the plaintiff be and the same hereby is overruled.

It is further ordered that the defendant may, at its opinion, an-

swer the complaint of the plaintiff at any time on or before September 4th, 1902, on payment of ten dollars costs.

By the Court,

JAMES O'NEILL, *Judge.*

Dated August 30th, 1902.

(Endorsements:) Original. No. —. Circuit Court, Eau Claire County. Ralph W. Jackman, trustee, *v.* Eau Claire National Bank. Order overruling Demurrer. Service of the within order is hereby admitted this 30th day of August, 1902. Wick*man* & Farr, Attys. for Deft. Frawley, Bundy & Wilcox, Attys. for Plff., Eau Claire, Wis. Circuit Court, Eau Claire County. Filed Dec. 11, 1903. George J. Losby, Clerk. Filed Dec. 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

11 Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

(*Answer.*)

The above named defendant by Wickham & Farr its attorneys, for answer to the plaintiff's complaint in this action,

Admits that on the 7th day of June, 1902, John H. Young filed his petition in the United States District Court for the Western District of Wisconsin, praying that he be adjudged a bankrupt, and that he was on that day adjudged a bankrupt.

Admits that on the 23rd day of June, 1902, the plaintiff was appointed trustee in said bankruptcy proceeding by Hon. H. M. Lewis, referee in bankruptcy, and that said trustee qualified as such trustee as required by law.

Admits that the defendant, Eau Claire National Bank is, and during all the times mentioned in the complaint was a banking corporation, organized and existing under and by virtue of the laws of the United States relating to National Banks.

Admits that John H. Young executed and delivered to the defendant two certain chattel mortgages, bearing date February 10, 1902, one of which mortgages secured the sum of eleven thousand, one hundred dollars ($11,100.00) owing by said Young to defendant, and by its terms mortgaged to said defendant about one million feet of lumber, about six hundred thousand shingles and about two hundred thousand lath, in the village of Cadott, Wisconsin, and at the mill of said Young on Paint Creek in Chippewa County, Wisconsin, and which said other mortgage secured the sum of fifteen thousand, nine hundred dollars ($15900.00) owing by said Young to defendant, and by its terms mortgaged to the defendant about

12 2,100,000 feet of saw logs on or near the Yellow River in Chippewa County, Wisconsin.

Defendant admits that D. S. Clark is president of the Waters-Clark Lumber Company, a corporation, and is also director of the defendant Eau Claire National Bank.

Admits that W. K. Coffin is cashier of the Eau Claire National Bank.

Admits that in the month of March, 1902, said Young sold to Waters-Clark Lumber Company certain logs covered by one of said mortgages, and certain other logs and admits and alleges that a portion of the proceeds of said sale was paid to the defendant to discharge valid and existing liens which it held against said property.

Admits that said sale from said Young to said Waters-Clark Lumber Company was not made in the manner provided by Chapter 80 of the Wisconsin Statutes, and that no bond was given by said Waters-Clark Lumber Company under or pursuant to the provisions of Section 1694 of the Wisconsin Statutes.

And for further answer to said complaint, the defendant denies each and every allegation therein contained and each and every part thereof, except as hereinbefore expressly admited to be true.

The defendant expressly denies that the Waters-Clark Lumber Company is a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, and alleges that said Waters-Clark Lumber Company is, and at all the times mentioned in said complaint was a corporation organized and existing under and by virtue of the laws of the state of Wisconsin.

Defendant alleges that said mortgages were given for a good and valuable consideration, and that neither of said mortgages, nor the payments made to the defendant as aforesaid, were made, given or received for the purpose of giving the defendant a preference over other creditors of said Young, contrary to the provisions of the bankruptcy law.

Defendant further alleges that prior to the commencement of this action, the plaintiff commenced an action in this court
13 against said Waters-Clark Lumber Company to recover from said Waters-Clark Lumber Company the purchase price of logs and other material sold by said Young to said Waters-Clark Lumber Company and thereby elected to treat and consider said contract between said Young and said Waters-Clark Lumber Company as legal and valid, and elected to look to and hold the said Waters-Clark Lumber Company, instead of this defendant, as liable to said trustee for all sums of money which the said plaintiff may be entitled to recover on account of the transactions mentioned in plaintiff's complaint.

WICKHAM & FARR,
Defendant's Attorneys.

(Endorsements:) Original. State of Wisconsin, Circuit Court, Eau Claire County. Ralph W. Jackman, trustee of the estate of John H. Young, a bankrupt, Plaintiff *v.* Eau Claire National Bank, Defendant. Answer. Due service of the within answer is hereby admitted this 9th day of September, 1902. Frawley, Bundy & Wilcox, Attys. for Plff. Circuit Court, Eau Claire County. Filed March 31, 1903, George J. Losby, Clerk. Filed Dec. 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

14 In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

Special Verdict.

Question 1. Was the property of Young on February 20th, 1902, when the chattel mortgages were executed, at a fair valuation, sufficient in amount to pay his debts?

Answer. No.

Question 2. Was the property of Young on March 3rd, 1902, when the lumber was transferred, at a fair valuation, sufficient in amount to pay his debts?

Answer. No.

Question 3. Was the property of Young on March 29th, 1902, when the logs were transferred, at a fair valuation, sufficient in amount to pay his debts?

Answer. No.

Question 4. Did the Waters-Clark Lumber Company, acting for the bank and pursuant to an arrangement between the said Lumber Co. and the bank, take the legal title to the lumber in question for the benefit of the defendant under an agreement with Young and the defendant to account to it for a portion of the proceeds?

Answer. Yes.

Question 5. Did the Waters-Clark Lumber Company, acting for the bank and pursuant to an arrangement between said Lumber Company and the bank take the legal title to the logs in question for the benefit of the bank under an agreement with Young and the defendant to account to it for a portion of the proceeds?

Answer. Yes.

15 Question 6. Was it the intention of Young, by the execution of the chattel mortgages to the bank to give the bank a preference, that is, to enable the defendant to obtain a greater percentage of its debt than any other creditors of Young, of the same class?

Answer. Yes.

Question 7. Was it the intention of Young by the transfer of the lumber to the Waters-Clark Lumber Company to give the bank a preference?

Answer. Yes.

Question 8. Was it the intention of Young by the transfer of the logs to the Waters-Clark Lumber Company to give the bank a preference?

Answer. Yes.

Question 9. Did the agents of the bank acting therein when the chattel mortgages were executed to it, have reasonable cause to believe that Young intended thereby to give the bank a preference, that is, to enable the bank to obtain a greater percentage of its debt

than any other of Young's creditors of the same class would be able to obtain?

Answer. Yes.

Question 10. Did the agents of the bank, acting therein when the lumber was transferred to the Waters-Clark Lumber Company, have reasonable cause to believe that Young intended thereby to give the bank a preference?

Answer. Yes.

Question 11. Did the agents of the bank acting therein when the Cadott logs were transferred to the Waters-Clark Lumber Company have reasonable cause to believe that Young intended thereby to give the bank a preference?

Answer. Yes.

16 Question 12. Did the officers or agents of the bank acting therein when the upper logs were transferred to the Waters-Clark Lumber Company have reasonable cause to believe that Young intended thereby to give the bank a preference?

Answer. Yes.

MARTIN PAGE, *Foreman.*

(Endorsements:) Circuit Court, Eau Claire County. Filed April 11, 1903. George J. Losby, Clerk. Filed December 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

17 STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The above entitled action having been at issue and duly noticed for trial for the March term of said court, for the year 1903; and said cause having come on to be heard before the court and a jury, and the jury having found a special verdict therein; and the parties by their respective attorneys having stipulated in open court that all material questions of value of the property in question under the issues raised by the pleadings should be found by the court and not submitted to the jury; and that such findings of the court, when made, should be deemed and considered a part of the special verdict herein;

Now, therefore, I, the judge before whom said action was tried, do hereby make the following findings of fact, pursuant to such stipulation:

1. I find that the value of the lumber, lath and shingles embraced in the chattel mortgage given by John H. Young to the defendant and dated February 10th, 1902, was something in excess of the sum of $3452.85.

2. I find that the value of the lumber alone embraced in said

mortgage and which was subsequently transferred to the Waters Clark Lumber Company, on or about March 3rd, 1902, was $3452.85.

3. I find that the value of the note given by Waters Clark
18–21 Lumber Company to Young and by him turned over to the defendant for said lumber was $3452.85.

4. I find that the value of the so-called Cadott logs which were embraced in the chattel mortgage given by John H. Young to the defendant, and dated February 10th, 1902, was $10077.84.

5. I find that the value of the note given by Waters Clark Lumber Company to Young, and by him transferred to the defendant on or about March 29th, 1902, such note being a part of the purchase price named in the bill of sale for the logs belonging to said Young, was $2508.14.

6. I find that the value of the so-called up river logs which were transferred by bill of sale from Young to Waters Clark Lumber Company, on or about March 29th, 1902, was $11055.84.

Dated September 18th, 1903.

By the Court,

JAMES O'NEILL, *Judge.*

(Endorsements:) Original. No. —. Circuit Court, Eau Claire County. Ralph W. Jackman *v.* Eau Claire National Bank. Findings of Court. Rec. J. Orders, page 186. Circuit Court, Eau Claire County. Filed Sept. 28, 1903. George J. Losby, Clerk. Frawley, Bundy & Wilcox, Attys. for Plff., Eau Claire, Wis. Filed Dec. 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

* * * * * * *

22 STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

At a general term of said court, begun and held at the Court House in the City of Eau Claire, and on the 18th day of September, 1903, a day of said term, present and presiding, Hon. James O'Neill, Circuit Judge.

R. W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

The above entitled action being at issue, and having been duly placed upon the calendar for said term, and coming on to be heard in its order before the court and a jury; and the jury having rendered a special verdict, and the court having made findings of fact, as to the value of the property described in the complaint, pursuant to the stipulation of parties; and the plaintiff having moved for judgment for certain specified sums, which amounts were each denied; and the defendant having moved for an order amending the verdict of the jury and for judgment dismissing plaintiff's complaint

with costs, which motion was denied; and the court having by order, dated this day, directed that judgment be entered in favor of the plaintiff and against the defendant for the sum of $6704.28, together with costs to be taxed by the clerk,

Now therefore, on motion of Frawley, Bundy & Wilcox,
23 attorneys for the plaintiff,

It is ordered, adjudged and decreed, that the plaintiff, R. W. Jackman as trustee of the estate of John H. Young, a bankrupt, do have and recover of the defendant, Eau Claire National Bank, the sum of $6704.28 damages, together with the further sum of $139.49 costs, making in the aggregate the sum of $6843.77.

By the Court,

JAMES O'NEILL, *Judge.*

(Endorsements:) Original. No. —. Circuit Court, Eau Claire County. Ralph W. Jackman, trustee, *v.* Eau Claire National Bank. Judgment. Rec. P. Judgments 5. Circuit Court, Eau Claire County. Filed Sept. 28, 1903. George J. Losby, Clerk. Frawley, Bundy & Wilcox, Attys. for Plaintiff, Eau Claire, Wis. Filed Dec. 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

24 STATE OF WISCONSIN:

In Circuit Court for Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, a Corporation, Defendant.

STATE OF WISCONSIN, *Eau Claire County, ss:*

I, George J. Losby, Clerk of the Circuit Court in and for Eau Claire County, Wisconsin, do hereby certify that the annexed summons, complaint, demurrer with proof of service, order overruling demurrer, answer, verdict, order for judgment and judgment, are all the original papers on file in my office, constituting the judgment roll in the above entitled action; and the same are transmitted to the Supreme Court of Wisconsin pursuant to the appeals taken herein by the notices of appeal and undertakings on appeal hereto annexed and herewith returned.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at the Court House in the City of Eau Claire, Wisconsin, this 11th day of December, A. D. 1903.

GEORGE J. LOSBY,
[SEAL.] *Clerk as Aforesaid.*

24½–24*f* [Endorsed:] Circuit Court, Eau Claire County. Ralph W. Jackman, as trustee, etc., Plff., *vs.* Eau Claire National Bank, Deft. Record on Appeal. Filed December 12, 1903. Clarence Kellogg, Clerk of Supreme Court, Wis.

* * * * * * *

25–33 And afterwards, to wit: on the fifteenth day of February, A. D. 1905, a supplemental return was filed in this court, in said cause, in the words and figures following, that is to say:

34 Filed Feb. 15, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

Circuit Court, Eau Claire County.

Filed Feb. 14, 1905. George J. Losby, Clerk.

Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

Be it remembered, that issue having been joined in the above entitled action by the service of a demurrer to the plaintiff's complaint which demurrer reads as follows:

"Circuit Court, Eau Claire County.

RALPH W. JACKSON, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The above named defendant by Wickham & Farr its attorneys, demurs to the plaintiff's complaint on the following grounds:

First. Said defendant demurs to said complaint, on the ground that it appears upon the face thereof, that the court has no jurisdiction of the subject of the action.

Second. Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that the plaintiff has not legal capacity to sue, in this, that said complaint fails to allege that any authority or permission was given to the plaintiff to bring this suit.

Third. Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that there is a defect of parties plaintiff and defendant, in this, that the plaintiff failed to
35 join John H. Young as a party plaintiff, and failed to join the Waters-Clark Lumber Company as a party defendant.

Fourth. Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that said complaint does not state facts sufficient to constitute a cause of action.

WICKHAM & FARR,
Defendant's Attorneys."

The issue joined by said demurrer was brought on for hearing before the court and the court entered an order over-ruling said de-

murrer, to which order the defendant duly excepted. The said order over-ruling the demurrer reads as follows:

Title.

"The above entitled action being at issue on the complaint of the plaintiff and the demurrer of the defendant thereto; and the argument of said demurrer having come on to be heard on due notice, and being argued by counsel for the respective parties, now, on motion of Frawley, Bundy & Wilcox, attorneys for the plaintiff,

It is ordered that the demurrer of the defendant to the complaint of the plaintiff be and the same hereby is overruled.

It is further ordered that the defendant may, at its option, answer the complaint of the plaintiff at any time on or before September 4th, 1902, on payment of ten dollars costs.

By the Court,

JAMES O'NEILL, *Judge.*

Dated August 30th, 1902."

Thereafter the defendant served its answer and the issue joined on the service of the said answer to plaintiff's complaint was brought on for trial at the March term of said court, at the court house in the city of Eau Claire on the 30th day of March, 1903, before the Hon. James O'Neill, circuit Judge presiding, and a jury.

Frawley, Bundy & Wilcox appeared as attorneys for the plaintiff and Wickham & Farr appeared as attorneys for the defendant.

36 The plaintiff then to maintain and prove the issues on his part, called as a witness, D. S. Clark who was duly sworn.

The defendant thereupon objected to the introduction of any evidence under the complaint, on the ground that the complaint does not state facts sufficient to constitute a cause of action. The court overruled the objection, to which ruling and decision the defendant duly excepted.

Mr CLARK testified as follows:

Examined by Mr. BUNDY:

I live in this city. My full name is DeWitt S. Clark. Since I returned I have lived in this city about two years. I do not hold any office in the Eau Claire National Bank. I am a director in the Bank and have been a director since about the middle of January, 1902. I am president of the Waters-Clark Lumber Company and have been since its organization in August, 1901. The principal

37 place of business of the Waters-Clark Lumber Co. is in Duluth. We do not operate a saw mill. We operate a lumber yard at Duluth. We do not have any yard or mill in the city of Eau Claire or this vicinity. The Waters-Clark Lumber Co. is a Wisconsin corporation with a branch office at Eau Claire. That branch office is at the Eau Claire National Bank I suppose. I have a part of a desk in the Eau Claire National Bank.

Q. Does that part of a desk constitute the office of the Waters-Clark Lumber Co. in this city?

Defendant's counsel object as incompetent, irrelevant and immaterial. The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. Well I should say it did. When I am here I attend to the business of the Waters-Clark Lumber Co. that comes here. We get a part of our mail here. We keep no stock here. We don't keep stock in any particular place. We buy logs and have them sawed and have them shipped from wherever they are sawed. We have not bought any logs, or sold or bought any lumber in this vicinity other than the logs and lumber of John H. Young. We have bought lumber or logs in the state of Wisconsin other than the logs of John H. Young. At West Superior, right across from Duluth and at Ashland. We bought lumber at Mason.

Examined by Mr. WICKHAM:

I just mentioned Ashland.

Examined by Mr. BUNDY:

My purchase of lumber there did not consist of taking an order and ordering it from some other mill, or of buying lumber to fill orders I previously have had. It consists partly in buying lumber to be shipped to Duluth in our yard. Mr. Coffin is not an officer or a stock holder in the Waters-Clark Lumber Co. Mr. C. W. Lockwood is not an officer or stock holder or director of the Waters-Clark Lumber Co. He is not employed by the Waters-Clark Lumber Co. Mr. O. H. Ingram is not an officers or stock holder of the Waters-Clark Lumber Co. Mr. Ingram, Mr. Coffin or Mr. Lockwood have not at any time since the organization of the Waters-Clark Lumber Co. been an officer, stockholder or director therein, or em-
38 ployed thereby.

Q. Did the Waters-Clark Lumber Co. receive from John H. Young sometime during the month of March, 1902, certain bill of sale of lumber located at or near Cadott?

A. Yes they bought some lumber from Mr. Young. They got an invoice for it. I have that invoice with me. (Paper produced.) There was not any other document or transfer of that lumber other than is shown by this invoice.

Q. In what manner if any did the Waters-Clark Lumber Co. pay for this lumber?

Defendant's counsel object as incompetent, irrelevant and immaterial and not at issue by the pleadings. The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. They gave Mr. Young a note for it on the date on which the inventory is dated, March 3, 1902. That was a demand note. I think it was at the Eau Claire National Bank that this invoice was delivered to me. I think I delivered the note to Mr. Young at the same time. So far as I know I think Mr. Young discounted the note at the bank. He did not indorse it there in my presence and turn it over to the bank and leave it there. I know that the note went into the bank there. I don't know that it went in as a part

of the same transaction. I have the note with me that was given in payment of this lumber. Paper marked for identification plaintiff's Exhibit A. (paper produced.) Note marked for identification plaintiff's exhibit B. This note which I have produced and which the reporter has marked exhibit B is the note I gave to Mr. Young at the time the invoice of lumber was turned over to me. I have produced here pursuant to subpœna the bill of sale which Mr. Young gave to the Waters-Clark Lumber Co. of certain logs. (paper produced and marked for identification plaintiff's exhibit C.) There were two. (paper produced and marked for identification plaintiff's exhibit D.) The two instruments which I have produced and which the reporter has marked respectively exhibits C and D are the
39 two bills of sale delivered to the Waters-Clark Lumber Co. by Mr. Young.

Exhibit A reads as follows:

"CADOTT, WIS., *March* 3*d*, 1902.

J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms —.
Car No. —.

Sold to Watters Clark Lb. Co., Duluth, Minn., 575475 feet lumber as per inventory at $6.00 per M. 3452.85."

Exhibit B reads as follows:

"$3452.85. EAU CLAIRE, WIS., *March* 3, 1902.

On demand after date, for value received, we promise to pay to the order of J. H. Young thirty four hundred fifty two and 85/100 dollars at Eau Claire National Bank, with interest at the rate of 7 per cent. per annum, until paid.

THE WATERS CLARK LBR. CO.,
By D. S. CLARK, *P't.*"

Stamped on face "Eau Claire Nat'l Bank. Paid Mar. 26, 1903. Eau Claire, Wis."

Indorsed on bauk: "47757. Demand Waters-Clark Lbr. Co. 3452.85. J. H. Young.

3/22/02	Paid	695.70.
3/23/02	"	160.72.
4/ 1/02	"	397.97.
4/ 9/02	"	243.04.
4/16/02	"	269.43.
4/29/02	"	575.92.
		2342.78.
Bal.		1110.07.
Int.		84.56.
Paid		1194.63."

They were delivered to me on the date which they are dated, the 29th of March, 1902.

Echibits C and D were offered and received in evidence. Exhibit C reads as follows:

"Know all men by these presents, that John H. Young, of Eau Claire, Wisconsin, party of the first part for and in consideration of the sum of eleven thousand & fifty five 84/100 dollars to him in hand paid by Waters Clark Lumber Company, a corporation organized under the laws of the state of Wisconsin, party of the second part, the receipt whereof is hereby acknowledged, have bargained, sold, granted, transferred, assigned and conveyed, and by these presents do bargain, sell, grant, transfer, assign and convey unto the said party of the second part, its successors and assigns forever, the following described personal property: those certain hemlock, ash, elm, basswood and pine saw logs now located and banked on the Yellow River, extending along said Yellow River from a point about ten miles north of Cadott, to a point about twenty two miles north of Cadott; said logs containing about 1,842,640 feet, according to the scale thereof, and being all marked thus; for a bark mark "Y O" and end mark ; including all logs banked, lying or being at or near said portion of said river in which said first party has any right, title or interest, and including those certain logs purchased and contracted to be purchased by said first party from the following named persons: William McKinnon, John Cox, Boyce & Guthrie, James Cox, Burt Guthrie, John Heoltoz, Ex Boda, George Freeman, David Claudy, Herman Berke, William Lancour, Andrew Anderson, L. Boyce, Peter Mercour, Nicholas Zubal, Cole McMaster, Abel Sellers and Wilson Downer.

Said first party does hereby agree that said second party may apply such portion of the consideration to be paid by it for said logs, to pay and discharge any and all valid liens that may exist against said logs in favor of any of the persons above mentioned, or in favor of any other person, whether such lien is evidenced by contract, or by time check or order for labor performed on such logs, and may make such payment either before or after the time when such lien claims become due.

Said first party further agrees either at, or as soon as possible after the time of the signing of these presents, to furnish said second party with a written detailed statement of all of such liens and does hereby agree to warrant and defend the title to said property, and agree that said property is free and clear from all liens and incumbrances not included in the statement heretofore agreed to be furnished, and he does hereby sell, transfer and assign all of said property to said party of the second part for its sole use and benefit forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal this 29 day of March, 1902.

JOHN H. YOUNG. [SEAL.]

Exhibit D reads as follows:

"Know all men by these presents, that John H. Young, of Eau Claire, Wisconsin, party of the first part, for and in consideration of the sum of ten thousand seventeen 84/ dollars to him in hand paid by Waters Clark Lumber Company, a Corporation, organized under the laws of the State of Wisconsin, party of the second part, the receipt whereof is hereby acknowledged, have bargained, sold, granted, transferred, assigned and conveyed, and by these presents do bargain, sell, grant, transfer, assign and convey unto the said party of the second part, its successors and assigns forever, the following described personal property: those certain pine saw logs lying and being in the town of Siegel, Chippewa County, banked on and along the Yellow River from about two miles to about four miles north of Cadott; said logs having been put in and banked during the past winter by said first party and containing about 1,670,000 feet, according to the scale thereof, being all the logs owned by said first party, or in which he has any right, title or interest, lying, being or banked on said river at or in the vicinity of the place
42 aforesaid: said logs being marked thus: for a bark mark "Y O" and for an end mark .

To have and to hold unto the said party of the second part, its successors and assigns forever.

Said first party does hereby agree at, or as soon as possible after the signing of these presents to furnish to said second party a written detailed statement of any and all liens that may exist of said property, whether created by contract, mortgage or by time check or order for labor performed, and to provide for the payment and releasing of said liens at the time of the execution of these presents.

And said first party further agrees that he is the owner of said property, has the lawful right to sell the same, that it is free and clear of all liens and incumbrances not included in such written statement, and that he will warrant and defend the title to said property unto the said party of the second part, its successors and assigns against the claims and demands of all persons.

In witness whereof, the said first party has hereunto set his hand and seal this 29 day of March, 1902.

J. H. YOUNG. [SEAL.]"

I have other notes which were given by the Waters-Clark Lumber Co. to Mr. Young and which have been returned to me (papers produced.) Paper marked for identification plaintiff's exhibit E. This note marked Exhibit E was given for the difference in payment between the sum which the logs came to and the amount of the labor liens that was against them, and unpaid orders. It was for the purchase of the logs. That note was not given on the day it is dated. It was given and delivered at the time the bill of sale is dated. That note exhibit E is dated March 24th and the bill of sale on the 29th. The logs which were embraced in these bills of sale were sold to the Dells Lumber & Shingle Co. I think the date of such sale was the 20th of May, 1902. I have with me the account, books or other records kept showing the amount for which the Waters-Clark Lumber Co. sold the logs. (paper produced) and marked for
43 identification plaintiff's exhibit F. This is in the form of a proposition made by the Dells Lumber & Shingle Co. and

accepted by the Waters-Clark Lumber Co. the purchase price being $17050. That embraced all the logs that were transferred to the Waters-Clark Lumber Co. by Mr. Young. I had something to do with the making of that sale, and with the negotiations leading up to it. I made some effort to sell the logs elsewhere. I made an effort to sell the logs for what was their good fair cash value. I at that time was familiar with the value of logs of that character. $17050 was a reasonable and fair value for the logs that were transferred to the Waters-Clark Lumber Co. by Mr. Young considering the condition that the logs were in. By that I do not mean the fact that they were up in Yellow River. I mean they were in the Dells Dam and to be sluiced down the river unless something was done with them.

Q. And logs going down the river to Beef Slough were taken there at pool prices. They have a regular fixed price for logs down there don't they?

A. I don't know anything about Beef Slough.

Exhibit F offered and received in evidence and reads as follows:

"EAU CLAIRE, WISCONSIN, *May 20th*, 1902.

Waters-Clark Lumber Company, Eau Claire, Wisconsin.

GENTLEMEN: We will give you, for all the Pine, Hemlock, Tamarack, Basswood, Ash and Elm and other and all saw logs aggregating 3,547000 more or less feet, bearing the Y O Bark Mark and ✠ End Stamp, free and clear from all encumbrance with assignment of mark and delivered in the Chippewa River, the sum of seventeen thousand and fifty dollars ($17050.00).

Terms. Our note # 54 dated May 20th, 1902, for $4000.00 payable on or before sixty days, our note # 55 dated May 20th, 1902, for $4000 payable on or before ninety days, our note # 56 dated May 20th, 1902, for $4000 payable on or before one hundred and twenty days, all above bearing interest at six per cent. per annum from date until paid, and our note # 57 dated May 20th, 1902, payable as the balance of above logs are delivered in the Chippewa River in the form of our two, three and four months' notes aggre-
44 gating five thousand and fifty dollars with interest at six per cent. per annum from date of such delivery at the rate of $5.00 per thousand feet.

DELLS LUMBER & SHINGLE COMPANY.
J. S. GILLETT, *President.*
JEROME E. GILLETT, *Secretary.*

May 20th, 1902.
We accept the above proposition.
THE WATERS-CLARK LBR. CO.,
By D. S. CLARK, *President.*"

The note dated March 24th, 1902, and marked plaintiff's exhibit E is in my hand writing.

Q. Can you tell how that note came to be made five days before the bill of sale was signed?

A. I think Mr. Young was in there. He was in there on the date that the note was made and for some reason the matter was delayed until the bill of sale was signed four or five days afterwards.

The note was not delivered to him until the bill of sale was signed. I have a document or books of account or some other means with me of showing the amount I received for the lumber that was transferred to the Waters-Clark Lumber Co. by Mr. Young. (paper produced.) This instrument I hand you says "list of sales attached;" I have the list of sales (paper produced). The total amount is $2,442.21. I have not disposed of all the lumber. There is still remaining 105,000 feet. It is hard wood culls. It would be hard to tell what that lumber that remains is worth. It is mostly saw culls and all of the grade of cull lumber. I shouldn't think you could get over five dollars a thousand for it. With that exception of 105,000 feet that is still left, this $2442.21 represents the proceeds of the entire lot. There were no shingles or lath transferred to the Waters-Clark Lumber Co. I had nothing to do with any shingle or lath (paper marked for identification plaintiff's exhibit G). Exhibit G offered and received in evidence and reads as follows:

"Statement of Lumber Sold from Young Stock.

406225'— $2442.21.
List of sales attached.
3 cars shipped out by Young after stock was sold to us.
1. E. M. Fish & Co. 3/25.
2. C. H. Mears & Co. 3/6–7.

45 *Statement of Lumber Purchased from J. H. Young.*

1902.
Mar. 3. 575475" 6.00 See inventory..... ..... 3452.85

Sales:

11.	Car	5773–24000'	#5 B'ds at	4.00.....	96.
12.	"	5887–24000"	#5 "	4.00.....	96.
13.		901–20200'	2 "	9.00.....	181.80
14.		5487–17000	#4	9.50.....	161.50
14.		6461–19400	2 "	9.00.....	174.60
17.		5427–17000'	#5	4.00.....	68.
19.		5773–24000	#5	4	96
20.		5887– 5990	#6	2.50	61.86
		15160	5	4	
22.		14786–17423	#5 & 6	2.50.....	65.61
26.		5669–24000	#5	4	96
24.		11036–22000	#4	9.50	209
28.		14530–17000	5	4	68
31.		5887–20000	2 "	9	180
Apr. 2.		14438–14682	#5	4	58.72
3.		5647–20650	#5 & 6	.....	75.20
4.		2856–17500	#5	4	70
10.		8642–17000	5	4	68
12.		2199–20135	4	9.50.....	191.21
16.		8968–17500	4	"	166.25
18.		5367–18135	4	"	172.21
		8624 { 7550 / 5900	#5 / 2 "	.....	86.25

Cr.			
Mar.	23.		709.90
	27.		164.
	31.		429.46
Apr.	10.		248.
	14.		274.93
	28		615.92
46		2442.21	2442.21

Q. Have you with your books of account or other evidence of the amount of money which the Waters-Clark Lumber Co. has paid to the Eau Claire National Bank out of the proceeds of these logs and lumber?

A. We haven't paid the Eau Claire National Bank anything. I took up the orders that were out against the logs. Those orders were held by a great many different people. I don't know how many of them the bank held. I have paid to the Bank the notes which I gave to Mr. Young and which Mr. Young turned over to the Bank. Those notes have been paid just recently. I can give the amount of the time orders which I have paid (witness produces paper). $18,942.59 is the amount. I have a detailed statement of the payments made (paper produced and marked for identification plaintiff's exhibit H). This statement which I have produced and which the reporter has marked plaintiff's exhibit H is a statement of the value of the logs which were transferred to the Waters-Clark Lumber Co. by Mr. Young at $6.00 per thousand and a statement of the amount which the Waters-Clark Lumber Co. has paid on account of said logs.

Exhibit H offered and received in evidence and reads as follows:

"Statement of Logs Purchased, Waters-Clark Lbr. Co.

1902. From J. H. Young.

Mar. 29.	Cadott Logs 1,669,640′ at $6.00.....	$10017.84	
29.	Upper Logs 1,842,660 " 6.00.....	11055.84	
29.	Paid Young		2508.14
	" Cadott Log Orders.....		9222.37
"	" McKimmon Jobbers		2914.97
	" McKimmon.....		2627.95
	" Sundry Jobbers.....		4177.30
	Bal. due from Young	377.05	
		21450.73	21450.73

47 There never was any correspondence between the Waters-Clark Lumber Co. and the Eau Claire National Bank relative to the purchase or sale of said logs, or relative to the disposition of the logs or the proceeds of the logs. On this exhibit H under date

of March 29, 1902, there is one item "paid Young $2508.14." That is the note referred to, which I gave Mr. Young and which he turned over to the Bank. The rest of the items on the right hand side are the time orders that were paid that were out against the logs. I did at some time prior to the time that the Waters-Clark Lumber Co. had these logs and this lumber transferred to it, know of Young having given a chattel mortgage on part of the logs and on all the lumber to the Eau Claire National Bank. I was not present at the time the mortgage was given.

Q. Did you sometime in the fall of 1901 make a trip to Cadott for the purpose of looking over Mr. Young's logs?

A. I was up there, yes, sir. Mr. Young and Mr. Coffin went with me on that trip. I don't remember just when it was. I know it was late in the fall. The ice was frozen. In the logging camp at the time I visited there they were putting in logs, cutting and skidding them. I don't think they had commenced to haul logs as yet. At that time I saw a few of the down river logs; that is the logs put in in the vicinity of Cadott. What is known as the upper logs were put in some twenty miles above Cadott. I didn't visit that. I have with me some time checks, the time checks I paid and took up (checks produced). I should think that Mr. Coffin and I were up there in November sometime as near as I can recollect and examined the logs. I don't know when the chattel mortgage was given. I conducted the business of paying up these time checks after these bills of sale were given to the Waters-Clark Lumber Co. Mr. Lockwood had a list of all the outstanding orders and they had to be left to him to see whether they were the right amount before they were paid. I left that list at the bank. I gave Mr. Lockwood that list; that was a list made out by Mr. Young, furnished by him showing the amount of time checks still outstanding on the logs at the time they were transferred to you.

48 Q. What connection or interest did Mr. Lockwood as a member of the Eau Claire National Bank have in looking over these time checks which the Waters-Clark Lumber Co. were paying up?

A. They are made payable there and I am out of the state about half of the time, so that during my absence Mr. Lockwood attended to it for me. The names of the parties to whom given indicate which were given for up river logs and which were given for down river logs. From the names of the parties to whom given I think I could tell whether they were lower logs or upper logs. I separated them out and made that list from the time checks showing the amounts paid on the up river logs on this exhibit. Those that are Cadott log orders are the lower orders and the McKinnon jobbers and McKinnon himself and sundry jobbers are the others as I understand it. These are the original time orders as they were presented to me or the Waters-Clark Lumber Co. There are two packages of orders I think there that were signed by Mr. Young. I don't know what time the Eau Claire National Bank commenced paying checks for the up river logs. I could tell by looking at the contract to whom the orders run whether they are down river logs or up river logs.

The names of the up river loggers are in one of the contracts there, the bill of sale. That is the bill of sale marked exhibit C; I think those are the names, William McKinnon and others. The time orders paid to William McKinnon, John Cox, Boyce and Guthrie, James Cox and the other men named in exhibit C I presume they would be for logs on what is known as the up river logs. I made some trips to Cadott to examine particularly the logs or lumber prior to the time when they were transferred to me. Mr. Lockwood went with me one time. I don't remember when it was. I couldn't say if it was before or after the chattel mortgage was given. It was before they were transferred to the Waters-Clark Lumber Co. I don't know just when I first learned of the fact that the logs and lumber were covered by chattel mortgages. I can't say if it was soon after the mortgages were executed. It couldn't have been a great while after. The second trip I went up with Mr. Lockwood I
49 think it was before Young's mill burned. I should think it was quite a while before his mill burned. I was not up there at any other time with Mr. Coffin other than the one time I speak of in November. I made another trip up there. Nobody was with me on the third trip. That was just before I purchased the lumber from Mr. Young, sometime between the 28th of February and the 3rd of March. That time I went alone. I did at that time have a scale made of the lumber. The amount of that scale was the amount which was inserted in this invoice as I call it.

Mr. WICKHAM: You mean what exhibit by the invoice?

Mr. BUNDY: Exhibit A.

This invoice contains the scale I made of all the lumber I got there at Cadott belonging to Mr. Young. There was some lath or shingles there at that time. Not but a few, I don't know how many. At the time the sale was made of the lumber there was there 25-1/2 thousand shingles. I didn't see those shingles. This is from my scalers report that I sent up there. There was no other lumber found by my scaler and reported to me other than the lumber and this 25 thousand and a half of shingles. I remember where that transfer of this lumber to the Waters-Clark Lumber Co. and the sale took place. It was at the Eau Claire National Bank. I do not remember what time of day. I don't remember if it was in business hours or late in the evening. I do not remember of being telephoned to at Mr. John Scott's house by Mr. Coffin relative to this matter. I do not remember of leaving Mr. Scott's and coming over to the bank and meeting Mr. Coffin and Mr. Young there. I don't think I did at any time to my recollection meet Mr. Young and Mr. Coffin at the bank after nine or ten o'clock in the evening. I remember a young man by the name of Will Cameron that worked for the bank during the spring of 1902. I do not remember of his meeting Mr. Young at the 9-25 train on the Wisconsin Central and bringing him down to the bank and Mr. Coffin telephoning me at a card party at John Scott's. I don't have any recollection of that. I don't re-
50 member of anyone being present besides myself and Mr. Young at the time this inventory was made out and this lumber was transferred to the Waters-Clark Lumber Co. This invoice

marked exhibit A is all in J. H. Young's hand writing. Mr. Young wrote the upper portion, the Waters-Clark Lumber Co. I think that invoice was made out in the bank by Mr. Young. That is my recollection of it. I had not had any conversation with Mr. Young relative to making that out prior to the date it was made out. That was the first time it had been mentioned between us. I couldn't say when it was, whether that was in banking hours or after banking hours. I don't remember whether Mr. Coffin was present or not at the time Mr. Young indorsed this note over to the bank and delivered it to the bank. I couldn't say whether Mr. Coffin was present at the time I gave Mr. Young the note for $3452.85 or not. I have forgotten whether he was there or not.

Q. I see by these bills of sale of the logs Mr. Clark marked respectively exhibits C and D that by the first one the consideration was written in there $11055.84 and in the second one it was $10077.84; how was that amount arrived at if you remember?

A. That was arrived at from the scales of the different lots of logs. At $6.00 per thousand. I know whose hand writing that is where the consideration is inserted. It is Mr. Lockwood's and it is Mr. Lockwood's in the other one. I don't remember anybody was present at the time that transfer was made of the logs from Mr. Young to the Waters Clark Lumber Co. other than myself and Mr. Lockwood and himself. That transfer took place in the bank. Mr. Young wanted to sell me the logs before the date on which the actual transfer was made. I had some conversation with him relative to the transfer of the logs from Mr. Young to the Waters-Clark Lumber Co. prior to the 29th day of March, 1902, when they were in fact transferred. We had several conversations. I don't know whether any other person was present or not. I don't remember whether we had any such conversation in the presence of Mr. Coffin. I wouldn't say we did not I have no record of the amount of these time
51 checks that were held by the Eau Claire National Bank and which the Waters Clark Lumber Co. paid to the Bank.

Mr. WICKHAM: I suppose you mean the amount the bank held at the time sale was made?

Mr. BUNDY: The amount they subsequently paid.

I have not produced any other documents or papers pursuant to this subpœna relative to this transaction that I have not given you. I think now all the records that I have you have. I think those logs which were transferred to the Waters-Clark Lumber Co. by John H. Young were worth in my judgment the amount named in the bills of sale. I think that would have been at that time a fair cash value for them. I think I paid Mr. Young all that they were worth. I don't know if I paid him any more than they were worth. I paid him considerable more for them than I sold them for. Which would have been nearer to the actual cash value what I sold them for or what I paid for them is a pretty hard question to answer. I didn't try to sell them until I was compelled to sell them. I was not trying to sell them from the time I got them until I did sell them. I had an offer for them prior to that time but I hadn't offered them for sale myself. I did not know that Mr. O. H. Ingram

had offered them to several parties. He offered them for sale to the Daniel Shaw Lumber Co. He offered them to one party, not several that I know of. I don't know how long before I sold them to the Dells Lumber Co. it was that Mr. Ingram offered them to the Daniel Shaw Lumber Co. Mr. Ingram was not interested in the Waters-Clark Lumber Co. He was not employed by the Waters-Clark Lumber Co. to find a purchaser for those logs. Mr. Ingram was president of the Eau Claire National Bank and was at that time I asked Mr. Ingram to get a price, to see what the Daniel Shaw Lumber would pay for them. I started to say that Mr. Young was going to saw the logs. It was not Mr. Ingram that insisted that the logs be sold to other persons. It is not true that the reason Mr. Young did not saw the logs was because Mr. Ingram objected to it. There was not any particular reason why I could not find out from
52 the Daniel Shaw Lumber Co. what they would give as well as Mr. Ingram could. It was just a matter of convenience that I had Mr. Ingram solicit instead of me. There was some substantial difference in the value of the hard wood lumber that is still remaining at Cadott at the time I got it and now. Some of the lumber that was there then is worth more and some that I shipped was worth more and some less. The part I have not sold, the part that still remains, I should think it was about all on an average. There wasn't much difference in the value of it then and now and what was shipped. I testified there was 105,000 feet still undisposed of which I thought would be worth approximately $5.00 a thousand. There was not any substantial difference in the value of the 105000 feet at the time it was transferred to me and the present. This lumber or logs rather, was not offered to any one else to my knowledge besides the Daniel Shaw Lumber Co. and the one who purchased it. I do not know of any other person other than me and Mr. Ingram offering it for sale. I offered the logs to Mr. B. A. Buffiington. I had no negotiations with Mr. Buffington in behalf of the bank. I had the first negotiations with Mr. Buffington myself. The second time Mr. Lockwood went with me and we were to take the logs together, Mr. Buffington, and Mr. Lockwood and myself. Take the logs from the Waters-Clark Lumber Co.

Q. And the purpose of that was, was it not Mr. Clark, was because as a part of the arrangement when you took these logs, John Young was to be permitted to saw them and Mr. Ingram in behalf of the Eau Claire National Bank refused to wait longer for Mr. Young to get ready?

A. He had nothing to do with them. It is not true that we three proposed to buy them. The purpose of the Waters-Clark Lumber Co. turning the logs over to its president and Mr. Lockwood and Mr. Buffington was because Mr. Buffington said he would look after the sawing of the logs and would be the active man in handling the affairs. That wasn't due to the fact that Mr. Ingram insisted on having the logs converted into money, Mr. Ingram had nothing to do with it. It wasn't for the purpose of enabling me to carry
53 out the agreement that I had made with Mr. Young, that he should saw the logs in the event that the transfer was

made of them to the Waters-Clark Lumber Co. There was such an arrangement made between the Waters-Clark Lumber Co. and Mr. Young. Not that Mr. Young was to have the sawing of the logs if he would turn them over to the Waters-Clark Lumber Co. The sale of it had nothing to do with it. It isn't true that I know of, that it was the matter of that agreement or the attempt to make that agreement and Mr. Young insisting upon it that delayed the transfer for some time. The only money that the Waters Clark Lumber Co. have paid to the Eau Claire National Bank of the consideration or out of the proceeds of these logs and lumber is that evidenced by the two notes, one of $3452.85 and one of $2508.14 and whatever time checks the bank held.

Exhibit E offered in evidence and reads as follows:

"15130
$2508.14 EAU CLAIRE, WIS., *March* 24, 1902.

Ninety days after date, for value received, we promise to pay to the order of J. H. Young twenty five hundred eight and 14/100 dollars at Eau Claire National Bank, with interest at the rate of 6 per cent. per annum until paid.

THE WATERS-CLARK LBR. CO.,
By D. S. CLARK, *Pt.*"

The note has stamped on its face "Eau Claire National Bank paid Mar. 26, 1903. Eau Claire, Wis." It is indorsed on the back "J. H. Young."

This bunch of time checks or time orders after the first one there is in Mr. Lockwood's hand writing. Some of them are dated at Cadott in Mr. Lockwood's hand writing and some are not. Some of those that are in Mr. Lockwood's hand writing are also dated at Cadott. Mr. Lockwood was up at Cadott in behalf of the Waters-Clark Lumber Co. I don't know as you would consider him as an employee. He went up at my request to make out the time orders (paper marked for identification plaintiff's exhibit I). The voucher marked exhibit I is for time checks paid to the Eau Claire National Bank. Exhibit I offered and received in evidence and reads
54 as follows: "Eau Claire National Bank, Wisconsin, June 7th, 1902. Pay to Eau Claire National Bank or bearer $13,813.50. Waters-Clark Lumber Co. by D. S. Clark. 'Young Orders.'"

Q. That was the amount paid by the Waters-Clark Lumber Co. to the Eau Claire National Bank on account of time orders that they held against these Young Logs?

A. Yes sir, that were there for collection, I don't know how many they owned and I don't know how many were there for collection.

Cross-examination.

Examined by Mr. WICKHAM:

I was asked if I had any conversation with Mr. Young about the invoice or bill of the lumber marked exhibit A prior to the time

when he made it out and you answered you did not; I did not have some conversation prior to that time with Mr. Young about buying that lumber I did more than once before that time. I do not remember how many times. After he first spoke to me about buying it I sent a man, I think his name was Sires up there to look the lumber over and make a report on it. He did so. After he made this report I went up and looked it over myself before I bought it. That was in contemplation of my purchasing it. I said that I received from the proceeds of that lumber $2442.21 and that there is about 105000 feet of lumber still left. I said that was the entire amount I had received as the proceeds. That was not the entire amount of lumber which I purchased. There were three cars shipped out that were not accounted for to me. The total amount purchased was 575,475 feet and the total amount sold was 406225 feet. I mean sold by me and the balance that is left there is 105,000 leaving about 60,000 feet that was shipped out by somebody else besides the Waters-Clark Lumber Co. The Waters Clark Lumber Co. did not authorize anybody else to ship it out. I know who it was that did ship it out after I purchased it. Two cars were shipped to C. H. Mears Co. shipped by John H. Young and one car was shipped by John H. Young to Fish & Co. and billed out by his scaler Albert Adams in his name. I did not authorize Mr. Young to take that lumber and ship it. He did not ever account to me for any
55 part of the proceeds. At the time the bills of sale were given by Mr. Young to the Waters-Clark Lumber Co. which are marked exhibits C and D respectively, this note of $2508.14 was given by the Waters Clark Lumber Co. to J. H. Young. I also testified that Mr. Young had furnished a list of the time orders and liens there were against the logs. $2508.14 for which the note was given represented the full purchase price mentioned in the two bills of sale after deducting from that purchase price the amount of those time orders. At that time some of these time orders were held by the bank; I didn't know the exact amount. I didn't figure it up to ascertain just what the bank held and what the others held. On March 29th when the bills of sale were given there were some of those labor liens and claims against the logs claims for which time orders had not yet been made out, there were some claims of that kind outstanding for which time orders had not yet been made out at that time. Those were all included in the list. In this statement marked exhibit H it appears I paid $377.05 more than the purchase price of the logs.

Q. How did it happen that you paid that much more than the purchase price?

A. Well there were some of them that had more coming than what was figured up at the time I bought the logs. There were a few logs that hadn't been scaled yet and the parties brought in the scale. In order to pay off these liens against the logs I was obliged to pay $377.05 more than Mr. Young claimed against the logs when I purchased. In fact I overpaid on the purchase price $377.05. Between the time when the bill of sale was made or the bills of sale were made by Mr. Young to the Waters-Clark Lumber Co. and the

time this check was given by the Waters-Clark Lumber Co. to the Eau Claire National Bank the check being exhibit I, other time orders had come in in the mean time to the bank. That check was given upon the bank account of the Waters-Clark Lumber Co. in the Eau Claire National Bank. It was money deposited by the Waters-Clark Lumber Co. in the Eau Claire National Bank long before that check was given for the purpose of paying these orders. The
56 time the check was given was the time I figured up and found out how much they had. I requested the Bank to take up other orders as they came in after the bills of sale were given as they should come in from time to time. That was done at my request. When the bills of sale were given by Young to the Waters-Clark Lumber Co. I agreed to pay as part of the purchase price of the logs various claims that were against the logs for liens, time orders, etc., mentioned in the list. That included all the time checks and time orders then held by the Eau Claire National Bank. It didn't make any difference who they were held by. I said that Mr. Lockwood had done some figuring on the amounts due on those time orders. I don't know whether or not he assisted Mr. Young in figuring them over and getting at the exact amount as near as possible. I understood he did at the time I made the purchase. That was the reason that matters were left to him, some of the subsequent orders drawn on the Waters Clark Lumber Co. were in his hand writing. I did have some conversation with Mr. Coffin at the time the bills of sale were made to me by Young about paying the time checks that the Bank held against Young. That conversation was that those time checks should be paid; that the time checks would be paid the same at the other outstanding time checks. Paid by the Waters-Clark Lumber Co. to the parties that owned them. The time checks held by the bank would be paid to the bank. Mr. Coffin consented to that arrangement. We had some conversation about the bank releasing the mortgage it held on a portion of these logs at that time.

Q. Did the bank agree to release it?

A. Yes, sir.

Mr. BUNDY: I object as incompetent, irrelevant and immaterial. The court sustained the objection to which ruling and decision the defendant duly excepted.

Q. Well I will ask you the question in another way then. I think the court will see the purpose of it. Did you have to buy those upper logs from any one else as well as Mr. Young?

Mr. BUNDY: I object as incompetent, irrelevant and immaterial, not proper cross-examination.

Mr. WICKHAM: The upper logs John Young had a very small interest in. He had a contract to purchase and there was very little margin but it was necessary to buy them on account of the peculiar situation which I want to show here. They were all marked
57 the same and mixed up together and another party had the mark.

Mr. BUNDY: I object to the statement as to what he wants the witness to testify when an objection is pending.

The COURT: Well the objection to the question will be sustained. To which ruling and decision the defendant duly excepted.

—. In exhibit H which was introduced in evidence there is an item "paid McKinnon $2627.95;" part of that was paid for logs and part for stumpage. That was a part of those same logs that is included in the bill of sale from Young. Mr. Young had a contract with Mr. McKinnon for those logs and it stated that Mr. McKinnon retained title to those logs until they were fully paid for and that was the balance due Mr. McKinnon. There is there an item "McKinnon jobbers and sundry jobbers," there were some other portions of these upper logs that were situated the same as McKinnon's.

Q. In the bill of sale marked exhibit B is included those certain logs contracted to be purchased by said first party from the following named persons: William McKinnon, John Cox, Boyce and Guthrie, James Cox, Burt Guthrie, John Holtis Exboda and various other parties named here; I will ask you if these men named here are the names of the other persons who had similar contracts?

A. Yes, sir; I think they had. And those were what were known as the upper logs. This amount that I paid for the logs includes what I paid to those different persons among others. I have paid the entire amount of those claims against the logs, both labor claims and purchase price claims that were included in the list given me by Mr. Young. And also paid in addition $377.05. I was asked about some arrangement or conversation that I had with Mr. Young to the effect that Mr. Young should saw those logs into lumber after he had sold them to the Waters Clark Lumber Co. It was mentioned that the logs should be sawed into lumber at Eau Claire at the old Valley Mill Co.'s mill site. Mr. Young was fitting up a mill there to saw logs I had not agreed upon any terms of contract with him for the sawing of the logs. The terms of the proposition were not mentioned. Afterwards I had a conversation with him about the terms of a contract or about making a contract. I was not
58 able to agree with him. We were unable to agree on the price per thousand for sawing the logs.

Q. What did he say about what he wanted?

A. I don't understand what you mean, do you mean the price he wanted. He wanted $3.50 a thousand and the wood and the lath and shingles to-. He wanted $3.50 a thousand and all the wood, lath and shingles that would be made out of the logs.

Q. How long was it after he sold you the logs that he made you that proposition?

Mr. BUNDY: I object as incompetent, irrelevant and immaterial not proper cross examination.

The court sustained the objection, to which ruling and decision the defendant duly excepted.

—. At the time the Waters-Clark Lumber Company purchased these logs I believed they were worth the amount I paid for them.

Q. Why did you afterwards sell them for less than you paid for them?

A. My negotiations with Mr. Young in regard to sawing them had terminated and the logs were in the Dells Pond and going down the river and I had an offer from the Dells Shingle & Lumber Co. of somewhere near a fair price and I had to take it. Mr. Pearsall telephoned me repeatedly that unless the logs were——

Mr. BUNDY: I object to what Mr. Pearsall said.

The court sustained the objection, to which ruling and decision the defendant duly excepted.

Mr. Pearsall is the man who has charge of the works at the Dells Dam which controls the logs. He told me that he couldn't hold the logs any longer. He had been holding them for about two weeks then. At the time I purchased the logs I believed that I could make arrangements to saw them and make a fair profit out of the transaction. The Waters-Clark Lumber Co. have a yard in Duluth and purchase stocks of lumber around in different places in Duluth and outside. We buy logs and have them sawed, buy and sell pine land and any other business that is in that line. The buying of such logs as these were a part of the regular business of the Waters-Clark Lumber Co. It would be hard to state what portion of the business we transact in Eau Claire. I live in Eau Claire and my home is here I reside here with my family. I state that I had desk room in the Eau Claire National Bank. It is not in the regular banking room in the bank. It is in the directors' room. The same
59 room that is used by the directors of the bank. All the conversations I testified to having had with Mr. Young in the bank were in the portion I used for my office, that directors' room. That building is a building owned by my mother. I have charge of the building. I testified that these notes were paid recently. The payments were made from time to time from about the time the notes were given.

Redirect examination.

Examined by Mr. BUNDY:

I said that the reason I sold these logs for less than I paid for them was because my negotiations with Mr. Young to saw them had terminated at that time, and that because of that fact and the fact I have mentioned, I thought I could not get any more for them, that was the best I could do. Before those negotiations had terminated I thought they were worth what I had paid for them and I could make a profit out of them. I have paid out as shown by exhibit H substantially $18,500 or $19000 for liens, log liens against the logs at the time I bought them. At the time I bought the logs Mr. Young gave me a list of the claims against them. I thought that the logs altogether were worth at that time in the neighborhood of $21000 which I agreed to pay for them. I was advised at the time I made the transfer that $21000 or something like $19000 would have to be paid to those people who had liens upon them. I understood that at that time. I understood at that time that Mr. Young's interest

in those logs was only $2500. I so understood it at that time, and that the value of Mr. Young's logs and lumber at that time so far as his interest was concerned was substantially $2500 for the logs and $3500 for the lumber. Prior to February, 1902, I had been a director of the Eau Claire National Bank perhaps three weeks.

Q. Had you at any time been informed or were you informed or as a director did you know that Mr. Young owed something there at the bank?

A. Yes Mr. Coffin had advised me and I had made an agreement with Mr. Coffin that if I bought the logs the liens which they held would be paid by me. I didn't know how much they had. Hadn't any idea. Was not informed I did not know the amount of
60 notes the bank held of Mr. Young's. I didn't know just how many. I knew he owed the bank some money but I didn't know how much. Mr. Coffin at the time I made this transfer was advised of the amount of claims that was still outstanding. The claims outstanding against the logs, lien claims and things of that kind. He had access to this list furnished by Mr. Young. He knew substantially the value of Mr. Young's interest in those logs, over and above the time checks. I never made any inquiry to ascertain as to whether or not any of these time checks or labor liens had been perfected by filing a claim for lien in the proper place in Chippewa County. I do know now whether some of these labor liens were created into liens by filing. I don't know to what extent. I don't know what portion. Those that were filed were paid. These liens that I speak of were filed by Pollis against McKinnon. I guess there was a dispute between Pollis and McKinnon and that was settled up in some way. I don't know if that was settled up before the transfer. Outside of the McKinnon logs and the McKinnon claims there was no other liens filed. So far as the rest of them are concerned it was simply time checks out against the logs and not as I understand it liens perfected by filing.

Recross examination.

Examined by Mr. WICKHAM:

Q. You were asked about what you knew of Mr. Young's property, what logs and lumber he had at the time that you purchased these logs; I will ask you if every dollar of labor claims against them that you knew anything about and every dollar of money that he owned on the logs or for the purchase price of the logs was provided for and paid by you at the time you made this purchase?

A. Yes, sir.

J. S. GILLETT called for the plaintiff, being duly sworn, testified as follows:

Examined by Mr. BUNDY:

I am president of the Dells Lumber & Shingle Co. That is the company that bought certain logs known as the John H. Young Logs last spring. I haven't the scale sheet. There is the scale cards (cards produced). They are only the upper logs. I haven't the

cards of the lower logs. I never had the scale cards of the
61 entire tract. I purchased the logs on the basis of the statement furnished by the Waters Clark Lumber Co. at a lump sum. I guess $17050.

Q. Did you look to see if you could find any correspondence Mr. Gillett that I asked you to bring?

A. I never had it. I can state the aggregate amount as shown by those scale sheets of the up river logs; 1,877,000 feet.

Q. Have you a contract that you made with the Waters-Clark Lumber Co. between that company and your company relative to these logs?

A. Similar to that only (indicating) (paper produced). I have no other contract or agreement relative to paying for the logs or terms of payment or anything outside of this except the bill of sale. (Bill of Sale produced.) That is the only agreement or arrangement that I have in writing between our company and the Waters-Clark Lumber Co., or our company and the Eau Claire National Bank. I haven't any correspondence with any of the officers of the Waters-Clark Lumber Co. or the Eau Claire National Bank. Before I bought these logs from the Waters-Clark Lumber Co. they were offered to me by the Eau Claire National Bank earlier in the season, along about the 15th or 17th of March. Mr. Ingram did not see me about it. It was Mr. Coffin.

Cross examination by Mr. WICKHAM:

I did go up and look the logs over at that time, at the time that Mr. Coffin spoke to me about the middle of March about the logs. That was before they had been sold to the Waters Clark Lumber Co. I told about the amount of the scale on the scale cards.

Q. Are the figures you gave the result of your own footing?

A. No, the statement—I verified the statement with these cards. I had the statement furnished and I verified the up river logs with these cards. I went over the cards and figured it up. The figures I gave are what I figured from the cards.

Redirect examination.

Mr. BUNDY: They conform to the statement given me. Mr. Clark gave me the statement.

C. W. LOCKWOOD called for the plaintiff testified as follows:

Examined by Mr. BUNDY:

62 I hold the office of Vice President in the Eau Claire National Bank.

Mr. BUNDY: We call Mr. Lockwood for cross examination under the statutes.

Mr. WICKHAM: We object to his being examined under section 4068 of the statute-.

Mr. BUNDY: We call him for cross examination under 4068 as an officer of the Bank.

Examined by Mr. WICKHAM:

There are two vice presidents of that bank. I think one is first vice president and the other second vice president. I am second vice president. I don't know if I am a managing officer of the bank I suppose so. I am not the general managing officer of the bank. I mean I am one of the officers.

Examined by Mr. BUNDY:

Q. Do you devote your time to the bank's interests?

A. Yes, I am there during business hours?

Q. And take some part at least in the management of the bank's affairs do you not?

A. Yes, I look after one part of it. I have given my attention especially to the credit department of the bank, looking up the standing of different parties, examining their statement and classifying them, looking over the accounts to see how the business goes on. I do not have general supervision entirely of the loan and discount department. I have general supervision, look after it. See to whom credit shall be given and how much, discuss it with the other officers of the bank. It is part of my business to see that loans or credit that in my judgment are too large are called in or reduced; bring it to the attention of the other officers.

By the COURT:

The other vice president is supposed to be the senior officer of the bank there. He is above me. I am second vice president. I do not have any general control of the business of the bank when he is there, when Mr. Coffin is there. I have access to all the books and the accounts and I look over the credits. I pay more particu-
63 lar attention to the investigation of out of town paper than anything else I have done. I report to some other officer of the bank. I wouldn't think I was a managing officer of any part of the business there. Mr. Coffin is the first vice president and the cashier. Mr. Ingram is president. Mr. Coffin is the active manager of the bank. I make that my special duty to look after that part of the work. I report to Mr. Coffin, also to the directors when they have a meeting.

Q. In any way do you have any general control of the business of the bank?

A. I don't know how to define it exactly. The question was never brought up before.

Examined by Mr. BUNDY:

Q. As a matter of fact you were appointed to the office of second vice president and the office of second vice president was created for the purpose of supervising Mr. Coffin wasn't it, that department of it I mean?

A. I never heard of any such thing.

The COURT: My impressions are that he is not either a principal officer or a general managing agent. He has charge of one depart-

ment and reports to somebody else. He has no general management of the business of the bank.

Examined by Mr. BUNDY:

I am second vice president of the Eau Claire National Bank of this city. I held such office from about the middle of January, 1902. Prior to that time I was one of the directors of the bank. As such director prior to the middle of January, 1902, I did not devote my time but very little to the affairs of the bank. Since that time as such second vice president I have given a good deal of my attention to the loans and discounts of the banks. It has been a part of my duty to know the amount of the indebtedness of foreign debtors of the bank and their standing and ability to pay.

Q. Has it also been a part of your duty to call in indebtedness that in your judgment had run too long and was larger than you thought it ought to be?

A. I could recommend that it be called in. I remember
64 of the Eau Claire National Bank taking some mortgages from John H. Young in the month of February, 1902 (Mortgages produced). I did as such officer of the bank cause these mortgages to be recorded with the city clerk of this city. I don't remember if I recorded them on the day or the day after they were executed and signed, very soon after as near as I can remember. I don't remember whether it was the day after; I don't remember the exact date. They are recorded. After these were signed I should think I took them up there and recorded them by the next day certainly. I don't remember the date on which they were recorded (papers marked for identification exhibit J and K).

Q. I show you these documents marked exhibit J and K and ask you if these are the mortgages that Mr. Young gave to the Eau Claire National Bank?

A. This appears to be a certified copy. Those are the mortgages or copies of them.

Exhibits J and K are offered and received in evidence with the indorsements thereon.

Exhibit J reads as follows:

"Know all men by these presents, that John H. Young, who resides in the City of Eau Claire, in Eau Claire County, Wisconsin, for the purpose of securing the payment of a note hereinafter mentioned, and in consideration of one dollar ($1.00) to him in hand paid, the receipt *of* where- is hereby acknowledged, does by these presents bargain, sell, assign and set over unto the Eau Claire National Bank, a banking corporation, doing business at the city of Eau Claire, in Eau Claire County, Wisconsin, all the following described goods, chattels and personal property, to wit: those certain pine and other saw logs owned by said Young, banked on Yellow River in Chippewa County, Wisconsin, being about 1,800,000 feet together with all other logs cut by said Young in the town of Segel in said Chippewa County, and yet to be hauled and banked on said river; said logs yet to be hauled and banked being about 300,000 feet, and

said logs being marked with a bark mark thus Y O and with and end mark this , which said property is now free and
65 clear from any prior lien or incumbrance and is in the possession of John H. Young, and is to remain in his possession until the same shall be taken possession of by said mortgagee as hereinafter provided.

To have and to hold forever, upon condition that if said mortgagor shall pay to said mortgagee, the sum of fifteen thousand, nine hundred dollars ($15900.00), according to the terms and conditions of a certain promissory note of even date herewith, executed by said mortgagor to said mortgagee, then these presents shall cease and be void, but in case of any default in making such payment, or any part thereof at the time above agreed on, or in performing any conditions hereof, the said mortgagee is hereby authorized and empowered, with the aid and assistance of any person or persons to enter into or upon any place where said mortgaged property may be and take possession of said mortgaged property and convey it away, and after the expiration of five days from the time of such seizure of said property, to sell and dispose of the same at public auction or private sale, with or without notice, in its discretion, or so much thereof as may be necessary to satisfy the said debt and interest and all costs and expenses in taking, keeping and disposing of said property, together with fifty dollars ($50.00) for attorneys fees, and to retain the same out of the proceeds of said sale, rendering the surplus, if any, to said mortgagor. And in case said mortgagee shall at any time deem said property or the said debt insecure, it is hereby authorized and empowered to take immediate possession of said mortgaged property, or any part thereof, in the manner aforesaid, and to sell the same and apply the proceeds as above provided.

The provisions of this instrument shall extend and apply to the heirs, executors, administrators, successors and assigns of the respective parties.

In witness whereof the said John H. Young has hereunto set his hand and seal this 10th day of February, 1902.

J. H. YOUNG. [SEAL.]"

In Presence of—
T. B. KEITH.
E. J. LENMARK.

There is indorsed on the back the following:

66 "# 14730. John H. Young to Eau Claire National Bank. Office of City Clerk, City of Eau Claire, Eau Claire County, Wis. Received and filed in this office the 21 day of Feb. 1902 at 2:30 o'clock P. M. J. C. Fennessey, City Clerk."

Exhibit K reads as follows:

"Know all men by these presents, that John H. Young, who resides in the city of Eau Claire, in Eau Claire County, Wisconsin, for the purpose of securing the payment of a note hereinafter mentioned, and in consideration of one dollar ($1.00) to him in hand paid, the receipt of which is hereby acknowledged, does by these presents,

bargain, sell, assign and set over unto the Eau Claire National Bank, a banking corporation, doing business at the city of Eau Claire, in Eau Claire County, Wisconsin, all the following described goods, chattels and personal property, to wit: all the pine, hardwood and other lumber, lath and shingles owned by said John H. Young, piled and being at and near the side track of the Wisconsin Central Railway Company in the village of Cadott, Wisconsin, being all the lumber, lath and shingles owned by said Young in said village of Cadott, and consisting of about 1,000,000 feet of lumber; about 600,000 shingles and about 200,000 lath; also all lumber, lath and shingles now piled and being at the saw mill of said Young on Paint Creek, Chippewa County, Wisconsin, which said property is now free and clear from any prior lien or incumbrance and is in the possession of John H. Young, and is to remain in his possession until the same shall be taken possession of by said mortgagee as hereinafter provided.

To have and to hold forever, upon condition that if said mortgagor shall pay to said mortgagee, the sum of eleven thousand, one hundred dollars ($11100.00) according to the terms and conditions of a certain promissory note of even date herewith, executed by said mortgagor to said mortgagee, then these presents shall cease and be void, but in case of any default in making such payment, or any part thereof at the time above agreed on, or in performing any
67 conditions hereof, the said mortgagee is hereby authorized and empowered, with the aid and assistance of any person or persons, to enter into or upon any place where said mortgaged property may be and take possession of said mortgaged property and convey it away, and after the expiration of five days from the time of such seizure of said property, to sell and dispose of the same at public auction or private sale, with or without notice, in its discretion, or so much thereof as may be necessary to satisfy the said debt and interest and all costs and expenses in taking, keeping and disposing of said property together with fifty dollars ($50.00) for attorney's fees, and to retain the same out of the proceeds of said sale, rendering the surplus, if any, to said mortgagor. And in case the said mortgagee shall at any time deem said property or the said debt insecure, it is hereby authorized and empowered to take immediate possession of said mortgaged property, or any part thereof, in the manner aforesaid, and to sell the same and apply the proceeds as above provided.

The provisions of this instrument shall extend and apply to the heirs, executors, administrators, successors and assigns of the respective parties.

In witness whereof the said John H. Young has hereunto set his hand and seal this 10th day of February, 1902.

J. H. YOUNG. [SEAL.]"

In Presence of—
T. B. KEITH.
E. J. LENMARK.

There is indorsed on the back the following:
"# 14731. John H. Young to Eau Claire National Bank. Office of City Clerk, City of Eau Claire, Eau Claire Co., Wis. Received and filed in this office the 21 day of Feb. 1902 at 2:30 o'clock P. M. J. C. Fennessey, City Clerk."

The indorsements on these show they were both recorded in the office of the city clerk on the 21st day of February. It will be my recollection that the mortgages were executed within a day or two of this date. I did go up to Cadott in Chippewa County a short time before these mortgages were taken for the purpose of looking over Mr. Young's property. Mr. Clark was with me on that
68 occasion. That was any where from the 7th to the 10th of February. I knew of the Eau Claire National Bank having started to foreclose that mortgage on the logs some time after it was given and posted notices of sale to that effect. I did personally cause that to be done or instruct that it be done. I knew when Mr. Young subsequently transferred the lumber to the Waters-Clark Lumber Co. I did know of Mr. Young having transferred the logs mentioned in that mortgage and certain other logs known as up river logs to the Waters Clark Lumber Co. Mr. Young was owing the Eau Claire National Bank at the time that transfer was made of the logs over $25000. I don't remember the exact figures.

Q. Was it substantially the same as at the transfer of the lumber a few days before?

A. There couldn't have been much difference. At the time the logs were transferred by Mr. Young to the Waters Clark Lumber Co. it was my understanding that a large number of labor claims were still unpaid for putting in those logs. Mr. Young furnished to me a statement or list of such unpaid labor claims. I have this list with me (list produced). This book which I produce contains a list of the unpaid labor claims as furnished by Mr. Young at that time. I know about what the aggregate amount was. It was about $18,700. I can't remember the exact amount. This just represents the amount of labor orders which had been issued against the lower logs and a few on the upper logs. The information regarding the liens against the upper logs was furnished in a different form. I don't know whether the information that was furnished me relative to the upper logs was brought over or not. That is the McKinnon matter that I speak of.

Q. Hadn't that been fixed before this transfer was made, settled up?

Mr. WICKHAM: Yes I think those were included in the amount that you have given.

The WITNESS: Yes they were included in this $18,000; all the figures are not in this one book.

By Mr. WICKHAM:

Q. Can you tell if the exact amount that was figured up at that time including both the upper and the lower logs was $18,565.54?
69 A. $18,565.54 was just exactly what it was figured.

Examined by Mr. BUNDY:

That represents the unpaid outstanding labor claims which might ripen into liens against all the logs owned by Mr. Young including stumpage and labor orders and everything that would have to be paid. At the time that bill of sale or bills of sale were given by Mr. Young to the Waters Clark Lumber Co. the amount of the consideration which was written in there is in my hand writing. At the time of the bill of sale as I remember it nearly $8000 of this $18,565.64 in labor liens which was then unpaid, was then held by the Eau Claire National Bank. I should say that the amount was $7,864.15. You show me a check marked plaintiff's exhibit I for $13,813.50 in favor of the Eau Claire National Bank signed by the Waters-Clark Lumber Co. with the notation that that was a check for Young orders or relating to Young orders in some way; that was to pay this amount I have given you $7,864.15 and other orders that subsequently came to the bank.

Q. I suppose Mr. Lockwood if the bank held a mortgage on all this property which was to be transferred to the Waters-Clark Lumber Co. that the bank were interested in having their security protected in that transfer were they not?

A. Certainly. Naturally they would be consulted before Mr. Young assumed to sell mortgaged property to Mr. Clark or Clark assumed to buy it. There was some arrangement made at that time prior to this transfer between me or other officers of the bank and the Waters-Clark Lumber Co. and Mr. Young by which the bank's mortgage and the bank's labor claims that they then held were to be paid. We were perfectly willing that the property should be sold if our liens were paid.

Q. At that time were your claims to be paid in full or were they to be paid in so far as the consideration named in this bill of sale would pay them?

A. The money that he received from the sale of these logs was to pay off these claims which would have to be paid and the balance Mr. Young was to turn over to the bank to apply on his
70 general indebtedness as I remember it. The bill of sale of the lumber was all in one note as I understand it and that was to be turned over to apply on the bank's account.

Q. Then at the time this transfer of the logs was made from Young to the Waters-Clark Lumber Co. for a consderation aggregating $21,133.68, being the sum of the two bills of sale, there was as you understood it at the time of the transfer to be deducted all of the unpaid labor claims amounting to $18,000 and something; is that as you understood it at that time?

A. That is the way I understood it. And the balance which represents Mr. Young's actual interest in the logs was to be turned over by Mr. Young when received from the Waters Clark Lumber Co. to the Eau Claire National Bank. Exhibit E being a note for $2500 and some odd dollars was all I understood at the time of the transfer to be Mr. Young's interest in those logs after the labor claims were paid. That as I understood it represented Mr. Young's interest in the logs over and above the labor claims and the note

marked exhibit D being for $3452.85 is the total amount which Mr. Young was to turn over to the Eau Claire National Bank as the proceeds of the lumber. So that Mr. Young's interest in logs and lumber as I understood it at the time this transfer was made, was the sum of these two notes $3452.85 and $2508.14.

Q. Now did you take any pains Mr. Lockwood to inquire or discover as to whether or not any claims for liens had been filed by these various holders of time checks against the logs in question other than the McKinnon matter?

A. It was not time for filing liens as I understood it at that time. I think there were none filed. I was present at the time or some of the times when this transfer from Mr. Young to the Waters-Clark Lumber Co. was discussed. I don't know how many different times I was present when it was discussed. It was a matter we discussed in the bank there frequently. I don't remember of being present at all when Mr. Young and others discussed it. I only remember being present when Mr. Young and Mr. Clark talked it over at the time the bill of sale of the logs was executed. I was present at that time.

71 Q. And were the notes which the Waters Clark Lumber Co. gave to Mr. Young made out at the same time that the bill of sale was executed?

A. Well the note was made out at the time the logs were sold and delivered but I wasn't present when he sold the lumber. At the time this bill of sale of the logs was made out I think the note which the Waters Clark Lumber Co. gave to Young was executed at that time. It was delivered by Mr. Young to Mr. Coffin at the same time. That was the arrangement and agreement under which we people as mortagees consented to release our lien. That the note would be immediately turned over to us. I don't think I was present when the transfer was made of the lumber. I don't remember being there.

Q. Do you recollect having a discussion or talk with Mr. Young in the bank one night sometime previous to his signing and executing the bill of sale of the logs?

A. Yes I remember talking to him. I don't know as it was in the bank, but I saw him one evening I remember. After banking hours. I think I advised Mr. Young to execute this bill of sale to the Waters Clark Lumber Co. I knew he had to sell them to somebody. I haven't any idea when the fire was. It might have been about a week after the fire on the 14th of February 1902, that these chattel mortgages were given.

Mr. WICKHAM: That is assuming that the fire was the 14th.

The WITNESS: Yes I have no recollection of the date of the fire.

Q. I suppose Mr. Lockwood that the fire was one of the things that made you uneasy and want to get security was it not among other things?

A. I don't remember much about that incident. I presume it had something to do with it. Mr. Young wasn't taking these logs to that mill as I understood it.

Q. You understood did you not that he was moving the machinery in those mills or intended to remove them down to the new mill at Eau Claire?

A. I didn't know much about his mills. I never saw them I certainly understood that Mr. Young without any mill wouldn't be in as good position to manufacture his product and convert it into money as with a mill. That possibly had *d*omething to do with my desire to get security. At the time I had this conversation at the bank in which I say I advised him to make this transfer,
72 he did not state to me any objections to making it that I remember, he simply declined to do it. I think he didn't give me any reason why he declined to do it. I can't remember it if he did. I wouldn't say that he did not. Before I consented to the sale of all these logs and lumber, I had examined the extent and amount of labor claims against it and the extent and amount substantially of Mr. Young's interest in it to get as near as I could the exact amount.

Q. After this transfer had been made to the Waters Clark Lumber Co. and the question came up of paying all these various labor claims against the logs, who transacted that business chiefly?

A. Mr. Clark and I went up to Cadott and settled up with all the men that were there at that time, that is with all these jobbers. We didn't settle with them all that time they wer-n't all there. There was some dribbling in for some time during the summer. When these accounts would come in I would compare them with the reports I had from Mr. Young's man before this sale was made and see if they were correct and then I would have an order drawn to pay them. An order drawn on the Waters Clark Lumber Co. The bank would take that up. I don't know if the Waters Clark Lumber Co. did keep any books of account relative to this transaction except such as was kept on the bank books. I don't know as a matter of fact that their accounts in so far as the payment of these time checks was concerned was kept on the bank books. I don't know whether they kept any books of account at their office, or not. Mr. Clark had memoranda and accounts there at his desk in the directors' room at Eau Claire I know. I did not see any such things around there as general books of account, ledger, journal, cash books, books of account. Mr. Clark was representing the Waters Clark Lumber Co. in that trip to Cadott. I was not representing the Eau Claire National Bank. I was up there with Mr. Clark because I knew so much about those claims that I could assist him materially in settling them up. There was something more than to compare them with the book that Mr. Young gave me. You had to figure up the amount of logs and fix the price Mr. Clark could do that un-
73 doubtedly.

Q. As a matter of fact Mr. Lockwood you took almost entire charge of settling up these amounts did you not?

A. I did that day at Cadott but I consulted with Mr. Clark frequently in the office.

Q. Wern't you Mr. Lockwood in a general way assisting Mr. Clark if you please and looking after the matters generally for the purpose of seeing that the bank got their proper share out of it and what was due them?

A. The bank had gotten their proper share. The bank had not

been paid the claim they held but they had been guaranteed by the Waters Clark Lumber Co. They had agreed to take up these orders. Certainly they agreed to do that before I consented to the sale. I think there was not any agreement in writing to that effect. I don't remember exactly how much Mr. Young still owes the Eau Claire National Bank. I should say twelve or thirteen thousand dollars. I never knew the Eau Claire National Bank to offer these logs for sale to anyone. I never heard of Mr. O. H. Ingram, the president of the bank giving express directions, sometime after the Waters-Clark Lumber Co. had taken a bill of sale of these logs, that they must be sold and converted into money at once or words to that effect. Mr. Ingram may have said those logs must be sold and not wait for Mr. Young to finish his mill. I don't remember hearing it.

Q. Don't you know that before the deal was closed with the Dells Lumber & Shingle Co. for the sale of these logs by the Waters-Clark Lumber Co. that Mr. Ingram was telegraphed to and asked to consent as to the price?

A. No I never knew anything about it. Prior to the time when the lumber was sold or transferred from Young to the Waters-Clark Lumber Co. I say that matter was discussed quite often, a good many times in the bank.

Q. What was the purpose Mr. Lockwood of taking a chattel mortgage on that lumber on the 20th or 21st of February and then changing it into a bill of sale a few days afterwards to the Waters-Clark Lumber Co. What did you people discuss. Why did you want to do that?

A. We took a chattel mortgage so that he could not sell the stuff without our getting the money on it. I don't remember if I had any talk with Mr. Coffin about making the sale of this to the
74 Waters Clark Lumber Co. in the presence of Mr. Young.

Q. Is it not true Mr. Lockwood that both you and Mr. Coffin were from time to time urging Mr. Young to transfer or sell it to the Waters-Clark Lumber Co.?

A. I don't think I ever said a word to Mr. Young about——

Q. Except on the one occasion you have mentioned?

A. That was about the logs. I don't remember saying anything to him about selling the lumber to the Waters-Clark Lumber Co. It is true that both I and Mr. Coffin advised Mr. Young from time to time to sell these logs to the Waters Clark Lumber Co. or anybody else that would pay for them. Twice I told Mr. Young that he ought to sell them to the Waters-Clark Lumber Co. I do not remember having any such conversation in Mr. Coffin's presence.

Q. Have you with you Mr. Lockwood the written statement of the liens existing on the logs which were covered by the mortgage to the bank which were furnished by Mr. Young at the time of the transfer?

A. Do you mean at the time of the sale to the Waters Clark Lumber Co.?

Q. Yes?

A. I have a statement showing the total. It isn't a detailed statement showing the amount of these orders. Mr. Young brought

down the book that he had here yesterday which showed a list of the orders he had issued, and then his scaler furnished a copy of the scale cards on the upper logs. Those were the scale cards that were turned over to Mr. Gillett and presented by him yesterday (paper marked for identification exhibit M). This paper which the reporter has marked as exhibit M was made by me from the orders which were paid and taken up. In the bill of sale here it is provided that Mr. Young was to furnish a written detailed statement of any and all liens that may exist against such property; that was the list that he showed you yesterday in the book, a list of the orders which he had drawn against the logs. All the orders that he had drawn were listed in that book, whether for supplies, labor or work in his lumber yard, or any other purpose.

Q. Were there any other liens on the logs listed in that book or the statement Mr. Young furnished and which is referred to in this bill of sale, were there any other kinds of liens except labor liens?

A. None that I knew of at the time. At the time when the
75 transfer was made and Mr. Young furnished the statement what was listed was solely the time orders or labor orders, whatever kind they were, which had theretofore been issued by Mr. Young against those logs. There was no list made by Mr. Young of mortgages which had theretofore been given to the bank and which had been released.

Q. I think you testified that as sort of superintendent of the loan and discount department of that bank it was your duty to keep track particularly of the credit department?

Mr. WICKHAM: I object as assuming something that the witness did not say.

The COURT: I don't remember just what he said. The witness may answer. To which ruling and decision — the court the defendant duly excepted.

A. Yes I gave more of my attention to that part. I testified that as a part of my duties as such I looked after statements made from time to time to the bank. I said that had particular reference to people residing out of town.

Q. Did you as such official have occasion from time to time to look up the statements that had been made by Mr. Young to the Eau Claire National Bank?

A. Yes I looked them up. I don't remember how many statements there were I had from Mr. Young that I examined. I only remember the late ones. Mr. Young gave me a statement after February 1st. Not in writing. I never saw any statements made in writing after February 1st. I had occasion to look at the statement which is dated February 1, 1902, on or about the time it was made.

Q. Was the giving of that statement by Mr. Young one of the things which prompted you to make the trip to Cadott between the 7th and 10th of February?

A. Not particularly. My purpose in making that trip was I wanted to find out how many logs he had got in. I wanted to find

out how much money he owed, any general information I could get. At that time I said Mr. Clark went with me.

Q. Just what did you do on that trip Mr. Lockwood with reference to getting the desired information?

A. Mr. Clark and I got a team and Mr. Young drove us up on Yellow River, and up and down the river on the highway.

76 Mr. Clark looked the logs over, then Mr. Clark went home and I went back to Young's office and we went over his books very carefully. My idea particularly was to get an idea as to how much money he owed. I did also at that time look over his books as to what money he had coming to him. At that time I think Mr. Clark and I simply looked at the lumber yard as we passed it from the station. I don't remember going through it.

Q. Did you at that time make any inquiries of Mr. Young as to the various items contained in the statement he had made of February 1st?

A. I did not refer to that statement at all. I had seen it before I went up.

Q. What did you understand at that time constituted Mr. Young's source of supplies of logs; where was he getting his logs as you understood it?

A. I supposed all the logs that he was putting in were the logs he was putting in at Cadott that day; until this time I was there from the 7th to the 10th. I never heard he was putting in any logs now known as the upper logs. I understood at that time that Mr. Young owned stumpage. As to his title to the stumpage, I didn't know except what he told me. He told me that he owned 2,000,000 feet of pine stumpage. He did not tell me what his arrangement was with reference to it, when he was to take it off, and how long a time he had to remove it.

Q. Did you understand that was wind falls and down timber?

A. I didn't know what it was. I never prior to that time learned what it was, had never been told anything about it.

Q. Are you a practical logger or lumberman Mr. Lockwood, so you can form any idea from the appearance of the logs as you see them up and down the river as to the value of them?

A. No not very much. That is the reason Mr. Clark went along. I did not go to Mr. Young's logging camp and examine his kits and logging outfit. I did not go to his mill and examine his mill. I didn't see the scale books but the scaler at the landing told us about how many logs there were in. It was not as much as subsequently went into the mortgage.

Q. Now you say that you discovered the first time on that trip up there that Mr. Young was putting in what is known as the up river logs?

A. That is the first time I remember of hearing of them at all.

77 Q. Had Mr. Young as you looked it up at that time and learned it at that time paid anything on the up river logs or were they simply contracts that he had made?

A. He said he had paid $900 on the upper logs and the balance of

whatever logs there were up there he owed for. He did not tell me exactly the amount of his indebtedness on that date; he told me about what he expected to pay per thousand for the logs and when the payments would be due; as the payments would be due..

Q. Then as you understood it Mr. Young's investment in the up river logs at the time you were there was substantially $900?

A. That is what he told me. I went up there after the transfer to the Waters-Clark Lumber Co. and made out a lot of orders. Those claims were not all due at that time but when an order was given to pay them there was a discount taken off for the unexpired time. The Waters Clark Lumber Co. did the discounting and got the benefit of the discount, and they paid just as much less than the order as the discount amounted to.

Q. And in figuring the amount that they paid on this lumber have you the full amount of the actual payments, in figuring these amounts as shown by this exhibit?

A. Those are actual payments. The discount was very small altogether. The mortgages which are given by Mr. Young to the Eau Claire National Bank were not drawn for a month after my return from Cadott on that trip. I was up there from the 7th to the 10th of February. I was thinking the mortgages were dated March 10th.

Q. No the mortgages are February 10th. The question is did you as soon as you returned from Cadott procure Mr. Wickham to draw up these mortgages or direct them to be drawn?

A. Yes I think the matter was considered but I won't be sure, the matter of getting security.

Q. The question is, did you when you returned from Cadott employ Mr. Wickham or Wickham & Farr to prepare the mortgages?

A. I don't remember whether he was employed before I went up there or after I went up there to draw these mortgages. I think the matter was considered for a week or so before they were actually drawn. I don't remember being present when the chattel mortgages were executed. I don't remember any conversation with Mr. Young in the presence of Mr. Coffin relative to the chattel mortgages.
78 I don't remember having anything to do with getting Mr. Young to give these chattel mortgages. My connection with it was subsequent relative to the bills of sale to the Waters Clark Lumber Co. I am quite sure I saw Mr. Wickham relative to the drawing of the mortgages.

Q. I see the mortgage includes quite a large number of shingles and lath, now when you went up there from the 7th to the 10th did you notice the shingle pile and the lath pile?

A. I didn't see it at all.

Q. Did you understand that Mr. Young for a year or two previous to the date of these mortgages had been putting in logs entirely on credit and that the bank had been carrying him during all this time by paying his time orders?

A. I knew that they had always taken up his time checks for the past year or two. He did not have a checking account at the bank. He simply issued time orders and the bank took them up.

Q. And then from time to time Mr. Young would give his notes to cover the over drafts on the account with them?

A. Yes, less what he had paid in I suppose. That had been the course of business for some year or two prior to the giving of these mortgages. I think at no time during that period Mr. Young had been even with the bank.

Q. What was the reason that you desired on the 7th to 10th of February to examine Mr. Young's books and logs; what was the purpose of it?

A. He was owing the bank a large amount of money and I wished a statement from him showing the exact condition of his business. He had made me a statement a week before that; the one referred to under date of February 1st. I thought so long as I was up there I might as well have him go over his books very carefully. One reason I went up there was because Mr. Clark was going up to look at those logs.

Q. The fact is Mr. Lockwood you went up to verify this statement as near as you could didn't you, to see if it was true?

A. I don't remember of doing that at all. I hav-n't any clear recollection of seeing that statement before I went up although I presume I did. The real purpose of my going up there was to look over for myself the condition of Mr. Young. And to see for
79 myself what property he had to which the bank might look to get its pay. Mr. Clark went up because he was a practical and experienced lumberman and could tell better the value of the property and what was there than I could.

Q. Mr. Lockwood you said something in substance, that as you understood it the chattel mortgages had been considered sometime before that. I also understand you to say you had nothing to do with negotiations leading up to the giving of those chattel mortgages; do you know with whom any negotiations were had with Mr. Young relative to those mortgages?

A. I presume with Mr. Coffin. I do not know of my own knowledge of his having talked or discussed chattel mortgages with anyone besides Mr. Coffin.

Q. He never had any talk with Mr. Clark so far as you know about giving chattel mortgages?

A. I don't know about that. I know I didn't have any talk with him about giving them. My testimony as to prior negotiations was based on something I heard that took place with Mr. Coffin and nothing of which I have any personal knowledge.

Q. Now then Mr. Lockwood when you say you understand Mr. Coffin had been discussing or considering the advisability of chattel mortgages do you mean to say that there had been any negotiations between Mr. Young or had this matter simply been considered among the officials of the bank as to the desirability of taking mortgages?

A. The officials of the bank had considered the matter of taking security. Now when Mr. Coffin first spoke to Mr. Young about it I don't know. As a matter of fact every time at several directors'

meetings of the Eau Claire National Bank the question of the line of credit that had been extended to Mr. Young was discussed.

Q. Is it not true that it was the universal sentiment at each one of those meetings that Mr. Young was owing a much larger sum of money than he ought to be owing to the bank?

A. Some of them thought so.

Q. Is it not true that at the last meeting of the directors of the Eau Claire National Bank prior to the time these mortgages were given that Mr. David Drummond one of those directors informed the directors that Mr. Young had to pay Drummond Bros. for everything that he got, that he would not give him any credit or words to that effect?

A. I don't remember whether he said that or not.

Q. I am not trying to give you the exact words but wasn't he advising the directors that Mr. Young was not worthy of that credit and that it was too large a credit?

A. I don't remember whether Mr. Drummond was present or not at that meeting. I do remember that was always discussed among the directors of the bank. Certainly some of the directors were of the opinion that Mr. Young was owing more money than he was able to pay to the bank.

Q. Well the expression in the meeting of the board of directors by some of the directors that John Young's account, some part of it at least must be lost?

A. I don't remember it at all sir.

Q. Was it not discussed Mr. Lockwood between the officers of the bank in the directors' meeting prior to the 10th day of February 1902 or the 20th day of February 1902, if you please, that John Young was not going to be able to pay the indebtedness that he owed to that bank or at least a suspicion—wer-n't they suspicious that they were not going to be able to get the full amount of the debt John Young was owing?

A. I don't know whether they were suspicious or not. They thought the loan was too large for a man of his amount of capital and that the bank ought to have security. The officials of that bank didn't know until after they got the scale of the lumber that that security was not ample for $27000.

Q. Did they know it at the time they took the mortgages Mr. Lockwood, with the class of lumber that Mr. Young had up there and the other property embraced in those mortgages, did they know that that was not sufficient security for the $27000 that he owed the bank?

A. No there wouldn't be enough security there for $27000. Even if they collected it and realized the full value of the whole property embraced in the mortgages I don't see how it could be sufficient. I understood at that time that those mortgages embraced all the logs that Mr. Young had except what interest he had in the up river logs and which I say amounted at that time to about $900. So that with the chattel mortgages on all the logs that Mr.

Young had and all the lumber that he had we didn't have
81 sufficient security for the amount which Mr. Young owed the bank. I presume that I as an officer of the bank felt and knew it at the time I took the mortgages.

Q. Do you know of any other property that Mr. Young had on the 20th of February, 1902, which was not embraced in the two chattel mortgages given to the bank, his interest in the up river logs, other than his camp outfit, consisting of sleds, horses, blankets, blacksmith outfit and equipment which he had furnished you in the list of *of* February 1st and the accounts due to him?

A. Yes I knew of other assets. He had from 18 to 20,000 dollars of other stuff. He had accounts receivable of over $4000.

Q. I embraced that in my question; that was the question, which Mr. Young had reported to you as due to him and which he showed you on your trip up to Cadott?

A. Yes he had 2,000,000 of stumpage at $3.00, which he put in at $3.00, $6000.00. And he had lumber, lath and shingles or its proceeds $1500. The lumber, lath and shingles were embraced in the mortgage. He claimed 1,000,000 feet of lumber on the 1st of February and after the mortgage was given it only showed 575,000 feet. That was embraced in the mortgage but we didn't find it there. Somewhere he had the proceeds of 425,000 feet of lumber which he said was worth $10.00. That would be $4250.

Q. What lumber is this last you have given us; where was that lumber situated?

A. I am blessed if I know. I suppose he had sold it after the mortgage was given. I was never able to find out where he claimed the proceeds were. What I am figuring is the difference between the amount of lumber that Mr. Young said he had and the amount that it actually developed that he in fact had.

Q. Have you a memoranda with you that you have made?

A. I put some figures down here so I wouldn't forget them. That is all. I knew what property it was that was embraced in those mortgages that were given on February 20th.

Q. The mortgage reads; all the pine, hardwood and other lumber, lath and shingles owned by said John H. Young, piled and being at and near the side track of the Wisconsin Central Railway Co. in the village of Cadott, being all the lumber, lath and shingles owned by said Young consisting of about 1,000,000 feet of lumber,
600,000 shingles and about 200,000 laths. Now my ques-
82 tion was what other property which was not embraced in the mortgage did Mr. Young have at the time you took those mortgages of which you knew about?

A. Well he had accounts receivable according to his statement of over $4000. 2,000,000 feet of stumpage at $3.00 would be $6000 and 425,000 feet of lumber which he claimed was mortgaged to the bank and which didn't appear——

Q. Strike that out; I am asking you about what was not embraced in the mortgage. that didn't purport to be the mortgage. At the time you took this mortgage I am asking you about, what

property did Mr. Young have that you didn't think was going into that mortgage, put it that way?

A. Shall I start over again? I understood at the time we took the mortgage that all of the lumber was going into the mortgage. So I thought at that time that this 425,000 if it was there was going into the mortgage with the rest.

Q. Eliminate from the question all property which you understood was going into the mortgage and tell us what other property he had that you then knew of?

A. He had accounts receivable $4000; 2,000,000 of stumpage at $3.00, $6,000.00; 300,000 feet of hard wood stumpage at $3.00, $900.00; 40 acres of land $280.00; 6 pairs of logging sleighs, wagons, carts, trucks $800.00; blankets, tools, teams and road sleigh $996.50. He had about 18 tons of hay at $8.00 $144.00. And then he had his mills which he had moved down to Eau Claire here. At the time the mortgages were executed on February 20th, I knew that one of the mills had been moved to Eau Claire and a good part of the other one. I knew what was left burned before the mortgage was given. I knew that the Eau Claire National Bank held assignments of the insurance policies on it and collected the insurance. I knew that part of the mill had been destroyed by fire. That is all I can think of now.

Q. What did you on February 20th understand—what was your understanding of the value of what was left of the mills after the fire?

A. I got it largely from Mr. Young's statement. I understood that a lot of the machinery from that mill that burned had been moved to Eau Claire. There was one mill left that hadn't
83 burned that he said was worth $2,500. I suppose the lumber there that Mr. Young had at Cadott, which was embraced in the mortgages was worth in the neighborhood of $10.00 per thousand.

Q. Did Mr. Clark tell you it was worth in his judgment any such sum as that. He bought it a few days after that for $6.00 did he not?

A. I don't remember what he told me. Mr. Clark did not look over the lumber while he was there that day. At the time the chattel mortgages were given by Mr. Young on these down river logs he didn't furnish me a statement of the amount of time checks and time order then outstanding against him and which would have to be paid. I don't think he did furnish it to the bank.

Q. Did you know at that time of the amount of unpaid claims that would have to be taken care of?

A. No I couldn't find out exactly what they would be. I knew he had men working in the woods who hadn't been paid. I knew they had been working on those logs and would have to be paid and in paying that it would to that extent increase his indebtedness to the bank when the bank took up these orders. I didn't think it was a very large amount because Mr. Young told me that the most of the men working on those lived in Cadott and he kept them paid up pretty well. I knew there was some labor claims

to be paid. Mr. Young went over the books with me at that time I was up at Cadott. I looked over at that time both the debts that Mr. Young was owing and the accounts receivable which Mr. Young had coming to him. I asked Mr. Young about the character of these accounts and he gave it to me. I don't know as it was each account but I asked him to tell me about them.

Q. Well he called your attention to some of the accounts like Boyle's and some of the others that he did not consider first class didn't he?

A. Boyle's account he didn't consider very good. A stock holder in our bank, Mr. Carson from Burlington said it was very doubtful. I don't remember any other accounts.

Q. You knew did you not that some time in 1901 at a time when Mr. Young was getting pretty badly behind with the bank and the bank was urging him to make payment and he did make considerable payment; you knew of Mr. Young making consider-
84 able payment on his indebtedness during the summer or fall of 1901 didn't you?

A. I didn't know how much he paid to the bank.

Q. That was before you began to keep track of the account was it?

A. It was before I used to look at that part of it carefully. Mr. Young's accounts as I examined them up there in his books, wer-n't particularly accurate so far as I could tell by looking at them myself. I don't think I did make any inquiries from anyone else in the city relative to Mr. Young's indebtedness and financial condition. I never had any talk with Mr. Barbar, or John Moon or William Rowe at any time prior to February 20, 1902, relative to Mr. Young's indebtedness.

Q. What in your judgment Mr. Lockwood at the time you took these mortgages on the property was the value of the security; you say it was not sufficient to pay your debt, what portion of the debt did you think it would pay in your judgment, after the labor claims were paid that were then out against it?

A. I don't think I could tell very closely. I don't think I have any other papers or documents relating to this transaction that you haven't asked for. I have with me just that memoranda that I made myself.

Cross-examination:

I say that in our business, that my business consisted largely in looking up the financial standing of parties who live out of town whose paper the bank handled. A great many of these parties live out of the state, out of this vicinity. I also do some work in investigating matters of that kind in the loan department of the bank and report to Mr. Coffin.

Q. Now who is it that passes upon a loan?

A. Why we both discussed the matter. Then if we want any more information we ask some of the directors of the bank.

Q. Well whose place is it to finally decide on a loan, that is as between you and Mr. Coffin?

A. Well I presume Mr. Coffin's opinion would over rule mine.

Certainly it is a part of Mr. Coffin's duties to pass upon the question of loans.

Q. You say your recollection was that you asked me to draw these mortgages; do you remember if I drew them at the time you asked me to do so?

A. No, I can't remember exactly when they were drawn I remember that the mortgages are dated at the time they were
85 drawn. And the date is written in in typewriting the same as the balance of the mortgage. I think at the time they were afterwards executed they were executed just as they were drawn without the change of the date.

Q. You said that afterwards the bank decided to foreclose the mortgage; what was the occasion of the bank foreclosing the mortgage, that is was there anything with reference to the condition of the logs and other logs on account of which the bank started to foreclose the mortgage? I will modify the question; I mean the mortgage on the logs; there was no attempted foreclosure or any foreclosure started of the mortgage on the lumber was there?

A. No. The occasion of starting to foreclose the mortgage on the logs was Young couldn't pay up the claims against him and we had discovered that the logs he had contracted for up river had the same mark on them, that they would come down and be mixed up with these logs, so it would be very necessary to get title to the two lots of logs in the same person. The logs up river were the logs put in by William McKinnon of Chippewa Falls. These other parties that were mentioned. They were marked exactly the same as the logs upon which the bank held the mortgage and when they would float in the river they would be mixed up together. They were both banked on the same river. The log mark was recorded in the name of William McKinnon in the lumber inspector's office at Chippewa Falls. I think we had discovered that before this attempt was made to foreclose the mortgage. I advised Mr. Young on two occasions to sell these logs to the Waters-Clark Lumber Co. because Young had paid almost nothing on the upper logs and he said he didn't have any money to pay the claims against the upper logs and it was absolutely necessary for him to sell both lots of logs to somebody so they could be handled by some one person. On account of the condition of the title and the fact they would be mixed up together. When I advised him to sell the logs to some one I believed that it was best for him as well as best for all of his creditors that he should do so.

I have been in the banking business since 1877. I was for
86 several years the cashier of the Bank of Eau Claire. That was prior to the time I became connected with the Eau Claire National Bank.

Q. Is a large portion of the business of all banks the loaning of money so as to make a profit on the loan in the way of interest?

A. That is the business of a bank yes. The income derived from interest is about its only source of profit. In loaning money to a customer of a bank it is the custom to make an investigtation and take financial statements from a customer. We have to rely upon the truthfulness of the statements so furnished almost entirely.

Q. Would you or would any other banker who was competent to transact banking business have dealings with a customer if you believed he was disclosing to you untruthful statements; disclosing to the bank untruthful statements as to his financial condition upon which to obtain credit?

A. No bank would do business with such a man unless it was obliged to. I believed that the information given by Mr. Young as to his financial condition was true.

Q. At the time Young sold the 575,475 feet of lumber to the Waters Clark Lumber Co. on the 3rd of March, state whether or not the mortgage that the bank held upon the lumber, lath and shingles was released off the file?

A. I remember taking one mortgage off the file. I can't remember positively which one it was.

Q. Do you remember that Young requested at that time that this mortgage be taken off and released from the lath and shingles?

A. I don't remember hearing him make any such request. I know the fact was it was taken off.

Mr. BUNDY: When was it taken off.

Mr. WICKHAM: I think at the time of the sale to the Waters Clark Lumber Co.

Mr. Young did retain and dispose or do whatever he had a mind to with those lath and shingles. I don't think the Eau Claire National Bank received the proceeds of those lath and shingles, neither directly nor indirectly.

Q. Did you of your own knowledge know anything about Young's selling any portion of the lumber embraced in the chattel mortgage between the time that you were at Cadott in the fore part of February and the time when the mortgage was actually executed?

A. I don't think I knew what he did sell. I did know that he had been selling his lumber from time to time to customers.
87 I presumed he would be selling from this lumber between the time I had been up there and the time when the mortgage was actually given if he got an opportunity.

Q. When the balance of the lumber that had been left had been sold to the Waters-Clark Lumber Co. state whether or not you believed that he sold his other portion of the lumber before the time when the mortgage was actually executed?

A. Yes he must have sold it before that. I don't know who else would have the proceeds. Yes I supposed that he had the proceeds. Mr. Young did not tell me anything at about the time of the transfer of the logs to the Waters-Clark Lumber Co. about his having money.

Q. Did he tell you at any time about having money in his pocket that he was to use to fix up his mill here in Eau Claire?

A. Yes. I heard him make that statement. I heard him say he had $2000 in money. He said he could use it to fix up this mill down on the Chippewa here in Eau Claire. That was the only time I heard him mention that. That was after the logs were sold to the Waters Clark Lumber Co. I did continuously from the time the mortgage was released on the lath and shingles up to the time when

Young made that statement, believe that Young had the proceeds of the sale of the lath and shingles and also of the lumber that was not sold to the Waters-Clark Lumber Co.

Q. You were asked about a statement given by Young to the bank dated February 1, 1902, and which is marked plaintiff's exhibit L; is this the statement that I show you (paper shown witness).

A. Yes, sir; that is the statement. That statement is in John Young's hand writing. Mr. Young claimed the value of the lath and shingles to be $1500 and it is so written in the statement.

Q. You said that in enumerating property that you knew of that he owned you mentioned 2,000,000 feet of pine stumpage at $3.00 a thousand $6000.00; what made you believe that Mr. Young had that stumpage?

A. Because he had been in the logging and lumber business up there two or three years and it was natural he should have some property of that kind in order to do business. He told me about that at Cadott. It is also included in that statement of February 1st. 300,000 feet of hardwood stumpage $3.00 a thousand
88 $900.00. The two mills $2500 each $5000 is included in the same statement. Those other items that I mentioned of horses, sleighs, wagons, carts are included in the statement. The amount of the assets of Mr. Young on February 1st as shown by his statement of outside book accounts was $37,633.50. The amount of book accounts as appear in that statement is $4607.75.

Q. And is there in that statement a list of the debts that he claimed to owe outside of what he owed the bank?

A. The accounts payable amount to $1326.77. This does not include what he owed the bank. What he owed the bank would be bills payable. There is in the statement of February 1st a list of what he owed for labor. That foots up to $822.59. At the time this statement was made I knew of no other debts owing by Mr. Young outside of what he was owing to the bank and outside of the claims which were liens against the logs except what appears on this statement amounting to $1328.77. When I went to Young's office in the fore part of February I investigated the books to ascertain what amount he was owing and what amount of claims were due to him.

Q. State whether or not at that time you carefully examined the books and made inquiry from him for the purpose of ascertaining as near as you could what debts he was owing?

A. I looked over the books of Mr. Young and asked him to give me a complete list of everything that he owed and I asked him very carefully. I asked him if he owed some concerns which he said he did not owe so as to be sure. I did make a memorandum of the debts which he said at that time he was owing. I have that memorandum with me. A list of the debts Mr. Young told me at that time he was owing is—

A. A. Cutter	$35.00
Eau Claire Grocer Co.	400.00
W. J. Davis	96.00
S. C. Brooks	75.00
Dells Milling Co.	50.00

F. Zimmerman	125.00
Peter Ditzler	25.00
Nichells & Dean	62.00
C. W. Cheney	82.00
H. T. Lange	22.00
Blacksmith	31.90
E. M. Fish & Co.	350.00
That foots up to	$1353.90

89 That corresponds very closely in amount with the statement of February 1st.

The COURT: When was this statement made, this last statement that you refer to?

Mr. BUNDY: From the 7th to the 10th of February.

He said he was owing E. M. Fish & Co. for work done on his residence in Eau Claire. He said he expected to borrow money on that house and lot there to pay E. M. Fish & Co.

Q. What reason if any did he give why he was to borrow money on his house and lot to pay that particular claim?

A. It was for work done on the house there and I suppose he didn't want to take it out of the business.

Mr. BUNDY: I move to strike out the answer.

The COURT: The last clause may be stricken out.

To which ruling and decision of the court the defendant duly excepted.

At the time of the sale of the lumber to the Waters-Clark Lumber Co. I didn't know of any debts that Mr. Young was owing aside from those which he mentioned in that statement, and what he was owing the bank and what he was owing which were liens on the logs, except a small amount relating to the upper logs. Aside from those things I knew of no liabilities of Mr. Young. I did not believe that he had any other liabilities.

Q. Did you ever know or hear of any other liability or believe that he had any other liability until you heard he had gone into bankruptcy?

A. I was not positive that he had any other large liability until I saw his statement which he filed when he made his application in bankruptcy. At the time that the sale of the lumber was made to the Waters Clark Lumber Co. and at the time the sale of the logs was made to the Waters Clark Lumber Co. I did believe that those debts which Mr. Young had given in his recent statement and in his statement to me comprised his entire indebtedness aside from what he was owing the bank and what was claimed against the logs.

Q. And did you know of anything which would induce you to believe otherwise?

Mr. BUNDY: I object as incompetent, irrelevant and immaterial, not proper cross examination and asking the witness to testify to a

conclusion which is for the jury. The court sustained the objection, to which ruling and decision the defendant duly excepted.

90 Q. Did you know of any reason why you could think otherwise?

Mr. BUNDY: I object as incompetent, irrelevant and immaterial not proper cross examination and calling for a conclusion and as ridiculous as to what he could believe. The court sustained the objection, to which ruling and decision the defendant duly excepted.

Those were all I knew anything about. I believed that statement was true. At the time Young sold the logs to the Waters Clark Lumber Co. I believed he had left his accounts receivable. They must have amounted to $4,000 plus what he had sold since his statement and less what he had collected and received himself. He must have had 2,000,000 feet of stumpage which was put in at $6.00. He must have had his lath and shingles or the proceeds from the sale of those lath and shingles. That amounted to $1,500. He must have had the proceeds of at least 400,000 feet of lumber. Worth about $10.00 a thousand. He told me he thought that was what it was worth. Lumber was bringing very good prices then. Of course I didn't know anything about the character of it.

Q. I think the evidence shows that the part that was left was largely cull lumber?

A. Yes the good part of the lumber had been sold. He must have had 300,000 feet of hard wood stumpage or the proceeds of it if he had sold it. He must have had 40 acres of land at $7.00 an acre—$280.00. He must have had 6 pairs of logging sleighs, wagons, carts, etc., which he considered worth $800.00. He must have had his blankets, tools, teams, sleighs, etc., which he considered worth $996.50. He must have had at least 18 tons of hay left which was worth about $8.00 a ton, which makes $144.00, and then he had his mill. He had a good part of two mills, must have had. He put in those mills at $5,000; $2,500 apiece. He had one of them left, and he had I think a good part of the other moved down to Eau Claire before it burned. His mills must have been worth in the neighborhood of $3,500 or $4,000. Calling the mills worth $3,500, that would foot up altogether to $22,267.69. I did think at that time that Mr. Young had property which was sufficient at a fair valuation to pay all his debts. I always supposed that to be so up to the time that he went into bankruptcy. In the figures I have made I have not included his house and lot in Eau
91 Claire at all. I know that property. A fair valuation of that property would be $4,500. At the time of the sale of the logs I testified that certain debts which were liens on the logs which included labor claims and claims for the purchase price of the logs were figured up and ascertained and deducted from the amount to be paid to Young, the payment of all of which were provided for by the Waters-Clark Lumber Co. At that time I didn't know of any debts of Mr. Young that were either liens on the logs for labor or that were for the purchase price of the logs or that existed at all in relation to labor or to the purchase price which was not pro-

vided for and paid by the Waters-Clark Lumber Co. I didn't know of any other debts of John Young at that time except these outside claims amounting to something over $1,300 which I mentioned and what he owed the bank that was not paid at that time.

Q. On your direct examination you said, in answer to a question asked you by Mr. Bundy, that some of the directors of the bank and I think you said yourself thought that John Young was owing to the bank more than he ought to be owing, had a larger credit there than he ought to have, did you mean by any testimony that you gave that you believed that John Young did not have sufficient property to pay all his debts including the bank?

A. I believed that he had sufficient property to pay all his debts including the bank, but I thought the loan was too large. I thought it was too large as a proper business transaction.

Q. Well, in your direct examination when you testified that Mr. Young was unable to pay certain debts, state whether or not you meant he was unable to pay it at the time or whether or not you meant that you thought he never would be able to pay?

A. I thought he had assets enough to pay his debts, but he didn't have ready money enough to handle the logging deal all the way through. That is what I meant in my direct examination when I testified as to his inability to pay. I didn't know much about the upper logs, but it seemed to me that they ought to be worth more than the claims against them.

Q. Now the testimony that you gave as to what you be-
92 lieved Mr. Young had on March 29th, you mentioned several different items and matters; state whether or not you believed he had all of those different assets on March 3rd.

A. He must have had all those different assets on March 3rd, or the proceeds of those that he had sold that he had on March 29th.

Q. State whether or not you believed he had any other assets on March 3rd that you did not include in your estimate of what he had or should have had on March 29th?

A. His logs on March 3rd were put in at a higher price, they were put in at $8.00.

Q. And of course on March 29th you knew that the difference was not an asset when the logs were sold?

A. No they didn't bring as much as it was supposed they would bring. On that account I did believe he had still more property on March 3rd over and above his debts than those items you mentioned on March 29th.

Q. On your direct examination you testified to a statement furnished you by Mr. Young of the labor liens against the logs at the time the sale was made to the Waters Clark Lumber Co.; state whether or not the amount included in the statement included all the labor claims so far as you were able to learn them, including the orders issued and any orders not yet issued.

A. He brought us a list of all the orders which had been issued and from that list and from what information he could give as to what else there was to be paid, we arrived as closely as we could at the amount of liens which would have to be paid against those lower logs.

Q. And did you also arrive as closely as you could at the amount of claims against the upper logs from information which he furnished you at that time?

A. Yes we arrived at it from information that was furnished either by him or by his scaler. It was all figured up and a balance struck which was the amount of this note.

Redirect examination.

Examined by Mr. BUNDY:

I figured up that. As I remember there were three classes of claims against the logs. Mr. McKinnon owed a good deal of the stumpage and he had contractors who were putting in that
93 for him. Then there were a number of men who were putting in timber that belonged to themselves. I was furnished with a list of all the timber that each man had put in and the different kind and price which he was to receive and with a list of the orders which had been issued by these various parties and that is the way I arrived as closely as I could at the amount which would have to be paid for those upper logs. I did this before the time that the sale was made. I didn't know what the price agreed upon was for the logs but when I learned it I took the total and the price and found the gross amount and then deducted the amounts which would have to be paid. In that way I arrived at the amount of this note which was the difference between the labor claims and the cost of the logs, and which the Waters Clark Lumber Co. gave to Mr. Young and Mr. Young gave to the Bank.

Q. In your experience as a banker have you learned to make some allowance for statements made by people who are largely in debt to you as to their assets and liabilities?

A. Certainly we have to look at it in a good many different ways.

Q. As a matter of fact banks usually take a statement of assets and make some allowances for shrinkage don't they?

A. Probably.

Q. And the reverse is true as to liabilities?

A. Probably. In giving these figures as to what property I thought Mr. Young had I have taken in every instance the value which Mr. Young placed on that property on this statement of February 1st.

Q. And that is intended to be your judgment of the valuation, you simply took the valuations that he gave you?

A. Took the value that he gave me and I thought it was a fair figure.

Q. Well did you know anything about it?

A. Well only in this way that all property of that kind was advancing in value. In my experience as a banker it is true that logs and lumber are known as what we call quick assets or assets that we can realize on in some amount pretty readily in cash. While carts, blankets and logging tools and horses are not considered as quick assets. Second hand saw mills, burned or partially burned are not

quick assets. The mortgage taken by the Eau Claire National
94 Bank on the down river logs and the lumber, lath and shingles embraced substantially all of what would be known as quick assets, or assets on which money could be realized to pay debts, except his accounts receivable and his stumpage.

Q. That stumpage you understood did you not Mr. Lockwood, that that was a mere option or license that Mr. Young had to remove logs on certain lands up to the 1st of May 1902?

A. No sir he told me that he owned 2,000,000 of stumpage and that it was worth $3.00.

Q. Didn't he tell you that his time in which he was permitted to remove that expired on May 1st?

A. He didn't tell me anything of the kind. I did not know it. I did not ask him for a description of the land. I, or any other officer of the bank to my knowledge, did not go up to Mr. William Irvine of Chippewa Falls to inquire what rights Mr. Young had on this land. I didn't go myself. I was up there to see Mr. Irvine about this.

Q. Was it not with reference to John Young's claim to certain stumpage on their land?

A. I went up there—I didn't go for that purpose, no. While I was there I did not ascertain the fact that he had to take whatever logs he had on there off by the 1st of May. I didn't understand what limit he had to take them off. I didn't understand he had a limit at all. I went up to Mr. Irvine for the purpose of determining if Mr. Young owed them any money. I don't think I made arrangements at that time for driving these logs down in Yellow river. This $1323 that Mr. Young gave me a list of that he owed when I was up to Cadott between the 7th and the 10th of February, did not include what he owed the people from whom he had bought the up river logs.

Q. And was not intended to include except the amount of the labor claims that he then owed on the down river logs?

A. That is all. The $1350 didn't include any labor claims on the lower logs or the upper logs either.

Q. Your evidence that you thought that Mr. Young had the proceeds of this 400,000 feet of lumber and which you have figured in your list at $10.00 a thousand, is based solely on the fact isn't it Mr. Lockwood that he mortgaged about a million feet and when the scale was taken there was only some 575,000 feet?

A. It is based on that statement of his.

Q. And is not based on any information or knowledge
95 you had received that Mr. Young had been selling any of that lumber or had received any proceeds of that lumber?

A. Except that I knew in a general way that he was selling lumber whenever he got an opportunity. I didn't know that he sold any after the date of the mortgage.

Q. That at the time the Eau Claire National Bank took the mortgage you didn't understand he had the proceeds of any such amount of lumber or any proceeds derived from the sale of lumber at all; you supposed the whole million feet that was mortgaged was there didn't you?

A. I presumed that yes. At the time I took the mortgage or the Eau Claire National Bank took the mortgage, the property which I supposed he had was the bills receivable, the stumpage, the hard wood stumpage, the 40 acres of land and the sleighs, blankets, etc. and the hay and whatever value these mills had.

Q. That would be some $18267 in place of $22267; now how much was Mr. Young owing the Eau Claire National Bank at the time the mortgage was given if you know?

A. I don't know the exact figures.

Q. Is there any way you can tell us within a reasonable time Mr. Lockwood or have you the data here?

A. I don't know unless Mr. Wickham has it. I don't know whether he brought that over or not.

Mr. WICKHAM: I don't believe I have anything from which you could testify Mr. Lockwood.

Q. Do you know now the amount that was ultimately realized from the upper logs over and above the labor claims; there was $2500 realized over and above labor claims on the logs, was there any part of that realized on the upper logs if you know?

A. I don't think we ever separated them.

Q. Is there any way by which you can tell how much labor claims were paid on the upper logs and how much on the lower? (Paper shown witness.) There is a statement exhibit H. Can you tell from referring to exhibit H how much the total labor claims were against the upper river logs?

A. Do you mean the claims that had to be paid including labor and for stumpage and everything?

Q. Yes.

A. $9,720.22. Deducting that from the price named in the bill of sale for the up river logs the margin was $1335.62.

Q. That $1335.62 was included in and formed part of the $2500 note that was given by the Waters Clark Lumber Co. to Mr. Young and by him turned over to the bank to cover the difference
96 between the entire labor claims and the cost of both lots of logs was it not?

A. Yes it was all included in the same amount.

Q. So that the amount that the bank was paid out of the proceeds of the up river logs was this sum you have mentioned $1335. and some cents?

A. Yes they were paid that and they were also paid any orders that they might happen to hold. At the time of the bill of sale the bank held $961.87 of orders drawn against the up river logs and those were paid out of these proceeds in addition to these notes.

Recross-examination.

Examined by Mr. WICKHAM:

Q. You said that the amount of that note given at the time of the sale of the logs to the Waters Clark Lumber Co. was arrived at from certain computations and that you made certain figures; did Mr. Young also figure on the matter with you?

A. He was shown the figures I don't know whether he verified them or not.

Q. Did he consent to the figures you made as correct?

A. Yes he certainly did not object to them.

Mr. BUNDY: I wish to offer in evidence a certified copy of the records of the referee in bankruptcy in Madison showing the claims filed and allowed in the bankruptcy court certified to by the referee.

Mr. WICKHAM: I object to the evidence as incompetent, irrelevant and immaterial, not at issue by the pleadings and also object to the purported copy as not being properly certified, there being no proof of its correctness.

Mr. BUNDY: I ask the counsel to state to the court and ask the court to have counsel state the manner in which the document is not properly certified to the end that we may correct it if there is any formal defect.

Mr. WICKHAM: I have not had time to examine all the defects. I see the person who signs this certificate pretends to certify
97 to facts or alleged facts instead of certifying to the transcript from such record. It does not purport to be based on a record but upon some fact or alleged fact resting in the recollection of the person who certifies to it and it is insufficient in form and substance.

Mr. BUNDY: I ask the court to require counsel to state the substance of his objection and the point of it. We are entitled to know in what the objection consists so that we may rectify it if there be any formal defect.

The COURT: I don't think of any statute which would permit the referee to certify that the claims by the parties on the lists were filed at the time stated, and all of said claims having been allowed by me, stand of record in my said office. He can certify to this transcript.

Mr. BUNDY: That is all I offer it for is that it is a transcript of the record on file in the office of the referee at Madison.

The COURT: The objection will be overruled, and the document received excepting that it will not be received for the purpose of proving the fact which is stated in the second paragraph of the certificate, that, the said claims by the said parties on said list were filed at the time stated and all of said claims respectively having been allowed by me and stand of record as allowed in my said office. For all other purposes it will be received.

Mr. BUNDY: But in so far as that record proves those facts that will be evidence of them?

The COURT: Yes.

To the decision of the court in overruling the defendant's objection, the defendant duly excepted.

Said paper was received in evidence marked Exhibit N and reads as follows:

No.	Filed. Mo. D. Yr.	Name of Creditor.	Address.	Attorney.	Amount Claimed.	Allowed. Mo. D. Yr.	Amount Allowed.
1	6-23-1902	Knapp, Stout & Co.	Menominee, Wis.	Warner & Jackman.	$233 30	6-23-1903	233 30
2	6-23-1902	Standard Oil Co.	Milwaukee, Wis.	Warner & Jackman.	36 89	6-23-1903	36 89
3	6-23-1902	Frawley, Bundy & Wilcox.	Eau Claire, Wis.		500 00	6-23-1903	500 00
4	6-23-1902	E. A. Martin.	Chippewa Falls, Wis.		75 00	6-23-1903	75 00
5	6-23-1902	Sallie F. Moon.	Eau Claire, Wis.	S. W. Gilman	5360 14 note.	6-23-1903	5360 14
6	6-23-1902	W. G. Jackson	Eau Claire, Wis.	S. W. Gilman	20 00	6-23-1903	20 00
7	6-23-1902	Dells Milling Co.	Augusta, Wis.	S. W. Gilman	51 92	6-23-1903	51 92
8	6-23-1902	Nichols, Dean & Gregg.	St. Paul, Minn.	S. W. Gilman	68 65 & int.	6-23-1903	69 65
9	6-23-1902	D. Shaw Lumber Co.	Eau Claire, Wis.	S. W. Gilman	100 00 & int.	6-23-1903	104 62
10	6-23-1902	W. J. Davis.	Eau Claire, Wis.	S. W. Gilman	90 68	6-23-1903	90 68
11	6-23-1902	A. A. Cutter	Eau Claire, Wis.	S. W. Gilman	35 45	6-23-1903	35 45
12	6-23-1902	McDonough Mfg. Co.	Eau Claire, Wis.	S. W. Gilman	142 54	6-23-1903	142 54
13	6-23-1902	Conway B. Daniels.	Eau Claire, Wis.	S. W. Gilman	18 06	6-23-1903	18 06
14	6-23-1902	John A. Osterman	Eau Claire, Wis.	S. W. Gilman	72 00	6-23-1903	72 00
15	6-23-1902	W. S. Monroe.	Cadott, Wis.	Tenney, Hall & Tenney and R. W. Jackman.	25 00	6-23-1903	25 00
16	6-23-1902	S. R. Keiser.	Cadott, Wis.	Tenney, Hall & Tenney and R. W. Jackman.	50 00	6-23-1903	50 00
17	6-23-1902	Fritz Miller.	Cadott, Wis.	Tenney, Hall & Tenney and R. W. Jackman.	50 00	6-23-1903	50 00
18	6-23-1902	J. M. Vizenda.	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	48 90	6-23-1902	48 90
19	6-23-1902	Peter Dietzler.	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	40 88	6-23-1902	40 88
20	6-23-1902	Henry Frazle	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	117 60	6-23-1902	117 60
21	6-23-1902	Alex. Lentz.	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	150 00	6-23-1902	150 00
22	6-23-1902	F. L. Monroe.	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	75 00	6-23-1902	75 00
23	6-23-1902	Mrs. Cora Griffin.	Cadott, Wis.	Tenney, Hall & Tenny & Jackman.	40 00	6-23-1902	40 00

In the Matter of J. H. Young, Bankrupt—Continued.

No.	Filed. Mo. D. Yr.	Name of Creditor.	Address.	Attorney.	Amount Claimed.	Allowed. Mo. D. Yr.	Amount Allowed.
24	6-23-1902	Frank Zimmerman.....	Cadott, Wis.....	Tenney, Hall & Tenny & Jackman.....	25 00	6-23-1902	25 00
25	6-23-1902	Valley Lumber Co.	Eau Claire, Wis....	Tenney, Hall & Tenny & Jackman.....	2500 00	6-23-1902	2500 00 (Secured.)
26	6-23-1902	Ore Swenson.....	Eau Claire, Wis....	Tenney, Hall & Tenny & Jackman.....	35 75	6-23-1902	35 75 (Preferred claim.)
27	6-23-1902	William Graves	Eau Claire, Wis....	Tenney, Hall & Tenny & Jackman.....	98 00	6-23-1902	98 00 (Preferred claim.)
28	6-23-1902	Ole Olson.....	Eau Claire, Wis....	.....	16 50	6-23-1902	16 50 (Preferred.)
29	6-23-1902	Louis Severson..... ...	Eau Claire, Wis....	.....	46 50	6-23-1902	46 50 (Preferred.)
30	6-23-1902	Ole Ness....	Eau Claire, Wis....	... .	54 00	6-23-1902	54 00
31	6-23-1902	William Gray.....	Eau Claire, Wis....	....	22 00	6-23-1902	22 00
32	7-12-1902	Teall & Thomas.	Eau Claire, Wis....	....	50 00	7-12-1902	50 00
33	7-12-1902	Swift & Co	Chicago, Ill.	Teall & Thomas.....	24 57	7-12-1902	24 57
34	7-23-1902	S. C. Brooks	Madison, Wis.. ..	S. W. Gilman	95 65	7-23-1902	95 65
35	7-23-1902	The E. C. Mill Supply Co...	Eau Claire, Wis....	S. W. Gilman	373 37 & int.	7-23-1902	391 28
36	12-9-1902	Eau Claire Grocer Co.....	Eau Claire. Wis....	Tenney, Hall & Swansen.	1496 68	12-9-1902	1496 68

100 District Court of the United States, Western District of Wisconsin.

In the Matter of J. H. YOUNG, Bankrupt. In Bankruptcy. No. 272 "B."

I, H. M. Lewis, referee in Bankruptcy in and for the Western District of Wisconsin, do hereby certify that the foregoing and annexed sheets are a true and correct transcript from the claim Docket kept and of record in my office, in which are registered the date of filing, names of creditors, address of creditors, attorney, if any, for creditors and the amount claimed by the creditors and allowed, in the matter of J. H. Young, Bankrupt.

That the said claims by the said parties on said list, were filed at the time stated and all of said claims respectively, having been allowed by me and stand of record as allowed in my said office. That I have carefully compared the copy with the claims on file in my office and that the same is true and correct as therein set forth and a true copy of the whole thereof.

In Witness Whereof I have hereto set my hand this 25th day of March, A. D. 1903.

H. M. LEWIS,
Referee in Bankruptcy."

DE WITT C. CLARK recalled, testified as follows:

Examined by Mr. BUNDY:

After I and Mr. Lockwood had been up to Cadott sometime between the 7th and 10th of February, 1902, and looked over the logs, I did not again make an inspection of the logs prior to the time I purchased them.

W. K. COFFIN called for the plaintiff, being duly sworn, testified as follows:

Examined by Mr. BUNDY:

I live in this City.

101 Mr. BUNDY: I call Mr. Coffin as an adverse party for cross examination under the statute, he being the cashier of the bank.

The COURT: You are entitled to do that I think.

I am the cashier of the Eau Claire National Bank and have been for over twenty years. I know Mr. Young. I have known Mr. Young for pretty near twenty years.

Q. What has been Mr. Young's business prior to the time that he engaged in the lumber business at Cadott, since you have known him?

A. Well for some time he worked for the Valley Lumber Co., made shingles for the Valley Lumber Co. and afterwards for himself in a mill that he owned here. I don't remember how many

years prior to going to Cadott he operated a mill here for himself; several years I should think. My recollection is that he operated his mill when the Valley Mill was not running for several years. That would be in the winter time that he operated his mill. During the summer time he made shingles for the Valley Lumber Co. in their mill. Prior to the time that Mr. Young went to Cadott, he had an account there in our bank off and on for a number of years; sometimes he did and sometimes he didn't. During the time he was carrying on this shingle business in the city I should think probably that he did carry an open account at our bank. I am not sure that he did all the time but probably he did some of the time. During that time I don't think his account was ever very large. Mr. Young first commenced being a borrower at our bank way back probably when he was running a trunk factory, making trunks here; that was 12 or 15 years ago I should think. From that time up to the time he went to Cadott he has been an occasional borrower.

Q. Large amounts or just temporary loans for short times?

A. Not large amounts and temporary loans. He first commenced being a large borrower and a continual borrower when he went to Cadott. I should think that was in 1897 probably. I am not sure at all about it.

Q. When was the first transaction that you remember of that you had with Mr. Young after he went to Cadott, in a banking way I mean?

A. I don't remember. I don't remember what the first loan was that he made.

Q. Do you remember of his starting an open account with
102 you when he went to Cadott or a short time afterwards?

A. I should think he did.

Q. Prior to starting that open account what had you known of Mr. Young's business affairs for several years prior?

A. Oh I had known something about what he was doing here in his shingle mill. I don't remember what I knew of Mr. Young's financial condition at the time he left Eau Claire and went to Cadott. I didn't know much about it except what he told me. I do not remember what he told me. I have no recollection of Mr. Young after going to Cadott borrowing the sum of $2000 from the Eau Claire National Bank. I think Mr. Young kept an open account with the bank for a time after he went to Cadott.

Q. Do you remember how the credit which Mr. Young established was made, in what way, what was deposited against which he drew checks?

A. The first credit?

Q. Yes.

A. No sir, I do not. I have not any reference or memoranda with me showing the beginning of the bank account, when it was commenced. He has not had an open account for several years. I don't think he has had an account subject to check in the last four years.

Q. What was the character of Mr. Young's business that he was conducting at Cadott as you understood it?

A. He was making lumber and shingles. On a small scale. I do

not know the capacity of his mill or the number of men that he employed. I can not give it to you approximately. I have been to the mill out from Cadott. The building was pretty small, rough, and crude. When I was there I think there was only an engine and a boiler and some shingle machinery in it. At the time I went to Cadott, at the time that he started the mill, I don't remember what, if any other property besides the mill Mr. Young had that I knew of.

Q. What if any income did Mr. Young have if you knew anything about it, other than from his mill and his work there, earned with his mill?

A. I don't know that he had any after he went to Cadott. The source of his income as I understood it before he went to Cadott, while he was here in Eau Claire, was making shingles in the Valley mill in the summer and running his shingle mill in the winter. I think I did have some other knowledge or information as to the amount of money which Mr. Young was worth when he went
103 to Cadott. I don't remember what it was.

Q. Well do you know that very soon after he got to Cadott and before he got started he began borrowing money at your bank?

A. I should think he did, yes soon after. I do not recollect that the first sum he borrowed was $2000 on a note. I don't remember the amount.

Q. Well during the years that Mr. Young operated his mills at Cadott did he do his banking with you people here in Eau Claire?

A. Yes I think all that he did he did with us. During part of that time he did have an open account subject to check. That was the early part of it. During the latter two or three years I think he did not have such an open account.

Q. Just state to the court and jury the system and manner in which the Eau Claire National Bank and Mr. Young conducted their business during the latter two or three years of his career at Cadott?

A. In the last two or three years, the last two years he did business with us it was only a borrowing business and the sums that he borrowed was evidenced by his notes to us.

Q. As a matter of fact Mr. Coffin the usual method of business was that he would employ men to buy logs or employ men to put in logs during the winter and issue time checks, which time checks you cashed did you not?

A. That was the principal part of it. Those time checks that we took we took almost without exception from Mr. Ragan of Cadott. Those time checks would be sent to the bank by Mr. Ragen and we would discount them and give Mr. Ragan credit for them.

Q. And Mr. Ragan would check it out as he had occasion to use it. It is the same thing, isn't it?

A. No it is a very different thing. Mr. Ragan kept an account with us and we took Mr. Young's paper and other paper with Mr. Ragan's indorsement and gave Ragan credit.

Q. In what manner did you get the notes of Mr. Young?

A. We loaned him money. I don't know that I can tell what

the money that we loaned him was used for by him. I don't think it was used to take up these various time checks.

Q. What was the character of the indebtedness and how was it evidenced from the year 1900 up to the 10th or 20th of February 1902?

A. I think we had one note that was Mr. Young's note to us, given for borrowed money. It was an $8000 note originally
104 and the other notes that we had were given by Mr. Young to Mr. Ragan to take up time checks when they fell due. Mr. Ragan indorsed the notes and sent them to us and took up the time checks.

Q. So that is the way you came to be a creditor of Mr. Young's was taking Mr. Young's notes to Mr. Ragan and discounted by Mr. Ragan at your bank?

A. Yes, sir. Perhaps I didn't understand your question. Do you refer to the notes which we have had since 1900? With the exception of the $8000 note every note we have had of Mr. Young we took from Mr. Ragan. We didn't hold the time checks after the notes were given. At the time the notes were given we surrendered the time checks to Mr. Young.

Q. Now as a matter of fact Mr. Coffin, Mr. Young was the man that brought those notes to the bank right along wasn't he?

A. No sir; never did. Never brought any of them. They were all sent by Ragan. It is not a fact that I would take time checks until I had a certain amount of them and then Mr. Young would come into the bank and give his note and I would surrender up to him those time checks I then held.

Q. His note indorsed by Mr. Ragan I mean?

A. No, sir, I have the notes with me which I held against Mr. Young in February, 1902.

(Papers produced.) Said notes marked for identification exhibits O, P, Q, R, and S.

Q. The oldest note appears to be the note of October 15th, 1900, marked exhibit S. Will you please read that note into the record?

A. $4902.98, Eau Claire, Wisconsin, October 15th, 1900. On demand after date for value received I promise to pay to the order of J. E. Ragan $4902.98 at Eau Claire National Bank with interest at the rate of 8% per annum until paid. Signed John H. Young.

Q. Read the indorsements that were made on that note prior to February 20th, 1902?

A. April 27th, 1901, paid $296.72. May 9th, 1901, paid $140.00; July 6th, 1901, paid 162.09; July 11th, 1901, paid $134.78; July 15th, 1901, paid $191.80; July 19th, 1901, paid $148.57; July 22nd, 1901, paid $171.12; August 8th, 1901, paid $188.32; August 12th, 1901, paid $150.43; August 12th, 1901, paid $161.47; August 17th, 1901, paid $500.00; August 21st, 1901, paid $229.93. August 23rd, 1901, paid $194.62. August 23rd, 1901, paid $223.01; Sep-
105 tember 10th, 1901, paid $347.02. September 19th, 1901, paid $88.30; September 27th, 1901, paid $150.00; October

12th, 1901, paid $498.20; October 17th, 1901, paid $147.45. October 24th, 1901, paid $212.66. October 29th, 1901, paid $322.56.

Q. What was the balance due on that note February 20th, 1902. Have you a computation of it some place?

A. I have not. There was a balance of principal of $243.93 with the accrued interest. I can not approximate the amount of accrued interest at that time, not without figuring.

Q. I show you a note marked exhibit R, read that note into the record?

A. $4350.96. Eau Claire, Wisconsin, January 1st, 1901. On demand after date for value received I promise to pay to the order of J. E. Ragan $4350.96 at the Eau Claire National Bank with interest at the rate of 8% per annum until paid. Signed John H. Young.

Q. Read the indorsements on that note made prior to February 20th, 1902?

A. July 24th, 1901, paid $174.50. That is all there was prior to February 10th, 1902. Some payment has been made on that note since February 20th, 1902. On April 5th, 1902, paid $725.81. There was $4176.46 and interest due on that note February 20th, 1902.

Exhibits S and R were offered and received in evidence and read as heretofore copied herein.

Mr. BUNDY: I now offer in evidence exhibit Q.

The COURT: It will be received.

Q. Read that note?

A. $6593.31, Eau Claire, Wisconsin, April 15th, 1901. On demand after date for value received I promise to pay to the order of J. E. Ragan $6593.31 at Eau Claire National Bank with interest at the rate of 8% per annum until paid. Signed John H. Young.

Q. Read the endorsements made prior to February 20th, 1902, if any.

A. November 14th, 1901, paid $81.47. That was not interest paid. It was not so applied. The amount due and unpaid on that note on February 20th, 1902, was $6511.84 and interest.

Exhibit P offered and received in evidence.

Q. Read that note Mr. Coffin?

A. $5236.07. Eau Claire, Wisconsin, July 15th, 1901.
106 On demand after date for value received I promise to pay to the order of J. E. Ragan $5236.07 at Eau Claire National Bank with interest at the rate of 8% per annum until paid. Signed John H. Young.

Q. Were there any indorsements prior to February 20th, 1902?

A. December 28th, 1901, paid $622.14. The balance unpaid on February 20th, 1902, was $4613.93.

Exhibit Q offered and received in evidence.

Q. Please read that note?

A. $361.66 Eau Claire, Wisconsin, October 15th, 1901. On demand after date for value received I promise to pay to the order of J. E. Ragan $361.66 at Eau Claire National Bank with interest at

the rate of 8% per annum until paid. Signed John H. Young I have got the note I told you about for $8000 here.

(Note produced.) Said note marked for identification plaintiff's exhibit T. Exhibit T offered and received in evidence.

Q. I will ask you to read that Mr. Coffin into the records.

A. $8000. Eau Claire, Wisconsin, April 2nd, 1900. On demand after date I promise to pay to the order of the Eau Claire National Bank at its office in the city of Eau Claire, Wisconsin, $8000 for value received with interest at the rate of 8% per annum until paid. Signed John H. Young. The amount of the payments on that note prior to February 20th, 1902, was $3854.66. Leaving a balance exclusive of interest due on that note of $4145.34. I have no other notes of Mr. Young which were outstanding February 20th, 1902. No notes which I then had have been paid and retired since that time. We had a lot of time checks that Mr. Young owed the Eau Claire National Bank on February 20th, which are not evidenced by these notes which I have read. I don't know that I can give you the amount of them on February 20th. Yes, I can to-. The total amount of time checks which the Eau Claire National Bank held against Mr. Young on February 20th, 1902, is $5437.42.

Q. Now was there any other indebtedness of any kind which Mr. Young owed to the Eau Claire National Bank on February 20th, 1902, other than these notes and time checks which you have told us about?

A. I think probably we had a note at that time $375.00 or about $375.00 which Mr. Young had given to the Mill Supply Co.
107 and that we had discounted for them. Other than that there was no other indebtedness.

Q. Now on or about February 20th 1902, Mr. Young gave to the Eau Claire National Bank two chattel mortgages did he not?

A. I don't remember when he gave them. They were dated February 10th. I should say they were signed and delivered to us before the 20th but I would not be sure what day. I don't remember about whether they were recorded on the 21st. They would be quite likely to be recorded within a day or two after they were made, ought to have been. At that time Mr. Young did give me two notes which these mortgages were given to secure. I have those notes with me.

Notes marked for identification exhibits U and V respectively. Note marked exhibit V offered and received in evidence. Exhibit V is a note dated February 10th, 1902, for $11,100 payable on demand to the order of the Eau Claire National Bank signed by John H. Young, and without indorsement.

Exhibit U offered and received in evidence.

Exhibit U is a note dated February 10th, 1902, for $15,900 payable on demand to the order of the Eau Claire National Bank and signed by John H. Young.

Q. Now at the time these two notes aggregating $27000 were given to the Eau Claire National Bank did you advance to Mr. Young any money?

A. Probably not on that day.

Q. Was the indebtedness evidenced by these two notes of $11100 and $15900 the same indebtedness that was evidenced by the former notes that have been put in evidence and the time checks you testified about?

A. Yes up to that time that was all that we held up to that time but we—He didn't owe us $27000 in addition to the former notes and time checks. It is the same indebtedness that he had formerly owed us back from 1900 and up to that time at different times as evidenced by these former notes.

Q. Now the notes that you have testified about Mr. Coffin, including the time checks and the $375.00 note of the Mill Supply Co. foot up $25,865.58 as we have it as the amount due on February 20th, 1902, exclusive of interest; was the difference between that sum and $27000 for which you took your notes the interest computed?

108 A. No, sir; I don't know if the interest would be about that amount. I have not figured that up to see.

Q. What was the difference between that $25865.58 and the $27000 if it was not the interest?

A. We were taking up his time checks right along. I have given you all we had taken up at that time. This other $1300 was intended to cover whatever time checks might be outstanding or that he might give after that date that we had to take up.

Q. It would be a very small margin between the principal and interest and the $27000 wouldn't it?

A. You figured the difference, I didn't; I don't know.

Q. How much of that was for interest and how much was for future time checks you were going to take up?

A. I don't understand your premises. I don't find any figures that correspond with yours.

Q. What I want is an explanation as to the discrepancy between the total amount due for time checks and for notes and the face amount of these notes that you dated February 10th and on which you took security?

A. Well, the difference would cover time checks undoubtedly that we might have to take up.

Q. Well part of that difference would be for interest, whatever accrued interest there was would be added to the principal sum and then that deducted from the $27000 would give the amount you provided for future time checks wouldn't it?

A. If there was anything in it to cover interest it might be so but I doubt if there was.

Q. Just answer my question Mr. Coffin; in arriving at the figures you figured up what was due on the former notes, the old notes did you not?

A. I don't remember that we figured it.

Q. Did you take a mortgage for $27000 without computing it?

A. We knew approximately what we had. I don't remember that we did any figuring to see exactly what we had.

Q. You just took a mortgage for $27000 without any particular indebtedness?

A. I should say we had very particular indebtedness for most of the $27000 and were liable if not likely to have to put in all of the rest of the $27000.

Q. Why did you make one of these notes $11,100 and the other $15900, Mr. Coffin?

A. I would say that the amount that those was made for—one of the notes was secured by a mortgage on logs and the other by a mortgage on lumber and the amount of each note was probably
109 figured on the value of the logs and the lumber—the amount and value of them. I hadn't any doubt but what the lumber was worth $11,100.

Q. You didn't think the logs were worth $15,900 or anything like that did you?

A. Yes.

Q. Well it turned out you were very much mistaken subsequently didn't it?

A. Perhaps so. I think I have not endorsed moneys that we have received from the Waters Clark Lumber Co. on any notes we hold against John H. Young.

Mr. WICKHAM: Look at the notes and see.

Q. I show you a note marked exhibit B signed by the Waters Clark Lumber Co. running to John H. Young and endorsed by him marked paid October 26th, 1903; was that note paid to the Eau Claire National Bank?

A. Yes, sir, that is indorsed on the $8000 note but not prior to February 21st, 1902. That payment was this note indorsed on that. The note was paid March 26th, 1903. The balance due on the note was paid at that time and there were a number of payments made on it. The other payments made were on March 22nd, 1900, $695.70 paid. March 20th, 1902, $160.72 paid. April 1st, 1902, $397.97. April 9th, 1902, $243.04. April 16th, 1902, $269.43. April 29th, 1902, $595.92. March 26th, 1902, the balance of the principal $1,110.07 and $84.56. The note you show me of $2,508.14 from the Waters Clark Lumber Co. to John H. Young indorsed by him has been paid. That note is not indorsed on any of John H. Young's notes.

Q. Why hasn't it been indorsed Mr. Coffin?

A. Well, I didn't know where to indorse it. There is plenty of field for indorsement there.

Q. Outside of these two notes of $2,508.14 and $3452.85 have you received any money from the Waters Clark Lumber Co. on account of the proceeds of the logs or lumber?

A. Yes they paid the time checks we had at that time, February 21st. Outside of the time checks and the two notes no part of the indebtedness which was due to the bank from Young on February 20th, 1902, has been paid.

The WITNESS: Perhaps I did not understand your question. Outside of the time checks paid by the Waters-Clark Lumber Co. and the notes given by the Waters Clark Lumber Co. to Young,
110 the Waters Clark Lumber Co. have made no payments to the bank.

Q. Has anyone else made any payments that have been applied on the indebtedness of Young to the Eau Claire National Bank and which existed February 20th, 1902?

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial and not at issue by the pleadings if it is intended for the purpose of reaching in this case any other payment that is claimed to have been made.

The COURT: I suppose you are not intending to reach anything except what you have set up in your complaint.

Mr. BUNDY: I want the payments out of the proceeds of this property.

The COURT: He may answer.

To which ruling and decision the defendant duly excepted.

Q. Out of this lumber and shingles and lath and logs is what I am talking about Mr. Coffin?

A. The Eau Claire Mill Supply Co. note was paid by the Eau Claire Mill Supply Co. That perhaps did not come under your question. The only other money that we have received to apply on these notes is $725.81 on April 5th, 1902. That we received from the Insurance Co. on account of the loss of Mr. Young's mill.

Q. And the fire insurance policy had been assigned to you?

A. Yes there were four policies.

Q. When were they assigned?

Mr. WICKHAM: I object as immaterial and not at issue by the pleadings. The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. When they were taken out. I don't remember the dates of them. I don't remember how long before February 20th, 1902, I don't think any policy ran for five years.

Q. Well give us your best judgment as you recall it no*t*; was it within a year do you think?

A. I think we had had all the insurance policies on the lumber up there at the mill all the time but whether these policies that
111 were in force when the mill burned were one month old or ten months' old I don't remember. I think they were all policies issued for one year.

Q. Well will you tell us just how much of the indebtedness which was due on February 20th, 1902, has been paid to the Eau Claire National Bank out of the logs and lumber which were embraced in your mortgages and the bills of sale to the Waters Clark Lumber Co.; it is the sum of these two notes and the sum of your time checks, isn't that right?

A. Yes.

Q. That makes a total of $11398.41; now Mr. Coffin is the balance of the indebtedness which existed in favor of the bank and against Mr. Young on that day with the exception of the note paid by the Eau Claire Mill Supply Co. and the insurance policies, still unpaid?

A. Yes, sir.

Q. Mr. Coffin from the time that Mr. Young began to be a bor-

rower from the Eau Claire National Bank after he went up to Cadott he continually kept getting in a little deeper all the time did he not?

A. Probably I think so. He owed us more when he quit than at the time he began.

Q. And his business so far as you observed was during all that time the same thing, operating a little shingle mill at Cadott?

A. Two mills.

Q. One little shingle mill and one little lumber mill out in the woods four miles from Cadott?

A. I supposed they were both lumber mills. We did have from time to time statements from Mr. Young. In a general way we knew about the amount of business he was doing and the volume of business he was doing. I don't know that the statement showed the volume of business he was doing. We knew the kind of business he was doing and the kind of timber he was cutting.

Q. You knew that he had gone to Cadott and purchased down timber on a certain tract of land and was cutting it into shingles and lumber?

A. I didn't understand it. I did understand that Mr. Young was upon land of his own and that he owned the pine stumpage. I was not told repeatedly that Mr. Young's property-stumpage, that he owned up there at Cadott was the right to go on to another man's land and haul off dead and down timber for a certain time. I never heard that his right expired on the first of May, 1902, on which to remove that timber. I was not told that repeatedly by Mr.
112 Young and others. I have been a banker for a good many
. years and for a good many years *were* associated with the Eau Claire National Bank.

Q. And one of the rules, isn't it of National Banks is not to lend to any one person to exceed $10000 except in rare cases; isn't that the rule or rather a law of the banking act?

A. The law is that you cannot loan more than 10% of the capital to any one person. Our capital is $100,000; ten per cent. of that would be $10000.

Q. Isn't it true that before you loan anybody anything in excess of that you are very careful to make inquiries, make very careful inquiries as to their financial condition?

A. I never loaned him in excess of that. I didn't consider taking his notes with Ragan's indorsement a loan to Mr. Young. I did not take the paper of any other person to the amount equal to $25000 without making careful inquiries as to their condition.

Q. Do you mean to say that you understood that Mr. Young was running a saw mill up there and never inquired to know what kind of title he had to the timber he was cutting or the stumpage he was cutting?

A. I supposed I knew what he was doing yes sir. I don't think I ever did make inquiries from the person from whom he purchased the stumpage to see whether he had paid for it or not, or caused such inquiries to be made. I didn't know that Mr. Lockwood for our bank made such inquiries of Mr. Irvine of Chippewa Falls to determine the fact as to whether he owed anything for that stumpage.

I didn't know and learn in that way that Mr. Young didn't have any stumpage at all except the right to remove it up to May 1st 1902. I never heard of it until to-day. At one time I did go to Cadott for the purpose of looking over Mr. Young and his plant and his property. That was in the fall of 1901. That was the time when Mr. Clark went with me.

Q. At that time were these notes or substantially all this indebtedness evidenced by notes outstanding against Mr. Young; did you hold these notes against him at that time?

A. Yes sir. I did not go up there for the purpose of ascertaining whether or not our notes were good and the debt was safe; I went to look over the work that they proposed to do that coming
113 winter, the logs that he was going to put in. The logs that he was going to put in the coming winter were at that time out in the woods. That was the Cadott logs. I never had anything to do with the upper logs.

Q. What was your purpose in looking over the logs that he wanted to put in that winter?

A. Well he wanted to borrow money to put them in. He didn't know to what extent he did want to borrow money.

Q. Did he want to borrow money enough to pay for all the logs he was cutting and pay for all the time checks?

A. Yes.

The WITNESS: I should like to answer that question differently.

Q. Well answer it as you wish to?

A. He claimed that he owned the logs and had paid for them. He wanted to get money enough to put them in, do his logging that winter. It was not my understanding that Mr. Young had no capital with which to carry on this logging and lumbering business except as he borrowed it from the bank. I did think that he had some place some working capital that I knew nothing of.

Q. Well where did you think he kept it?

A. It was in his business. He did not have any bank account any place that I knew of.

Q. Didn't you know as a matter of fact that every laborer that worked for him and every bit of supplies that he purchased and all his work was carried on by giving time checks which were paid at your bank?

A. I think that is true. I don't know in the spring of 1902 that all the logs that Mr. Young then owned and the lumber that he then had piled represented substantially all of his available assets for the payment of his debts. I have in the banking business learned to know that logs and lumber are always available at some price for cash or usually in good times at least.

Q. And have you also learned that logging sleighs and camp outfits and property of that character are not what is known as quick assets and convertable into money quickly?

A. Oh they are pretty good assets. I as a banker do not consider that a good asset to loan money on, blankets and blacksmith outfit and things like that. When I took a mortgage on Mr. Young's

property, his logs and lumber, I did not pick out and embrace
114 within that mortgage substantially all of the assets that had any cash value at that time.

Q. Are you able to tell without looking at some paper the assets that Mr. Young had on February 20th 1902 outside of what you embraced in your mortgage?

A. In a general way I could yes. He had 2,000,000 of pine stumpage. He had 300,000 of hard wood stumpage. He had two mills. He had nearly $500 of account. He had a little land and logging outfit. I guess that covers the most of it.

Q. You had collected the insurance on the mills or one of them had you not, or at least you knew that it had burned and you held the insurance policy on it?

A. February 21st.

Q. Yes?

A. I don't remember whether it burned before that or not. I don't remember whether or not that mill had burned before we took the mortgages. That is not the very thing that precipitated and caused us to take that mortgage, because Mr. Young's mill had burned down and he was without any business. That didn't have anything to do with it.

Q. The fact that Mr. Young who has been using your money all winter to buy logs to get ready for the season's sawing and then in the spring lost his mill, didn't have any effect on your faith in your ability to collect your debt at all?

A. Not the least. The logs were not going to that mill at all.

Q. But they were going to a mill at Eau Claire and the machinery from that mill was to be used in the Eau Claire mill. You knew that didn't you?

A. No sir, the machinery that was to come to Eau Claire from that mill had been moved before the fire. I knew that. It was moved before I was up there. The little mill and the shingle mill machinery burned that we collected $775.00 money for. I suppose the insurance company had appraisers to fix the value of that mill that was destroyed or the part of it that was destroyed. I don't know that Mr. Charles Coffin of this city and others fixed a value on it. I don't know that they fixed the valuation on it at $7000.

Q. You never heard that before?

A. No sir I have no recollection of it. I don't remember if after this fire occurred and Mr. Young had lost his mill, and on the very next day, he called on the Eau Claire National Bank. I didn't on that day or a day or two succeeding ask him to make us a chattel mortgage on what he had left.

115 Q. Didn't you after you procured a chattel mortgage to be given on this property and properly recorded in the office of the city clerk in this city; didn't you within a week or so thereafter telephone for Mr. Young to come down from Cadott to Eau Claire, that you wanted to see him?

A. I have no recollection of it.

Q. Didn't you have your man employed in the bank, named Mr. Cameron, meet Mr. Young at the Central depot for the purpose of

bringing him to the bank at ten o'clock at night or half past nine?

A. I have no recollection of it.

Q. Didn't Mr. Young come with Mr. Cameron to the bank and meet you there and didn't you telephone for Mr. Clark to come over?

A. I have no recollection of it. I didn't at that time tell Mr. Young that I wanted him to put the lumber that was formerly in the mortgage into a bill of sale to the Waters-Clark Lumber Co. for the reason that his other creditors might make him trouble. I did not know that all the property that Mr. Young had up there at Cadott, all the property that he owned was property that he had bought and procured with money that he had borrowed from the bank.

Q. You knew that when he started in up there he didn't have any money didn't you?

A. I supposed he had. I didn't know that when he first started, or the very first thing he did was to borrow money at our bank to pay his time checks.

Q. And as a matter of fact Mr. Coffin, hadn't you been dunning Mr. Young all during the year 1901, trying to get him to pay up something following him up day after day to pay these demand notes?

A. Undoubtedly. I have no recollection that I followed him as early as the spring of 1901 clear up to the Omaha depot one day to get him to make a payment on one of these notes. It isn't true that on the way to the depot, Mr. Young on his way to Madison, while a member of the legislature, told me that when he came back he would borrow some money and make a payment on one of these notes. I have no recollection that on his return he did borrow some money and pay some four or five thousand dollars on that indebtedness. I don't think he did sir. He didn't pay it and I never knew of his borrowing it.

Q. Well within a week or within two weeks at least after
116 the chattel mortgage was given on the lumber Mr. Young gave a bill of sale of that to the Waters-Clark Lumber Co., did he not?

A. He gave one March 3rd. I did not urge Mr. Young to give that bill of sale. I know that he did subsequently give a bill of sale to the Waters-Clark Lumber Co. of a lot of logs. I did not urge that transaction. I did not tell Mr. Young to make that transfer and advise him to. It is not a fact that I sent for Mr. Ragan the man that indorsed these notes to have him come down there to *pur*suade Young to have him transfer that over to the Waters-Clark Lumber Co. It isn't a fact that the whole transaction was engineered by me and the arrangement all made by me by which that was transferred by Young to the Waters-Clark Lumber Co. and made for the benefit of the Eau Claire National Bank. As you understand my testimony it is to the effect that I thought Mr. Young was perfectly good and had ample property to pay his debts. I thought so all during the year of 1901; while I was dunning him day after day to get him to pay on these demand notes I still thought he was perfectly good and that his property was ample to pay his debts.

Q. Well $5000 worth of time checks and about $18000 I guess it is of notes, you still thought that he was perfectly good and had ample property to pay all his debts?

A. I wouldn't say that we had that many time checks all through the winter of 1901 and 1902. There was no time during the winter that I felt apprehensive of our debt. I felt all the time that we were perfectly secure. After Mr. Young's mill burned down I still felt perfectly secure. The purpose of a bank is to loan money on interest and make money on it and the more we loan the better if the borrower is good.

Q. You were perfectly satisfied with your loan to Mr. Young in the amount you were carrying him for during all that time were you Mr. Coffin?

A. I don't know that I would say that I was perfectly satisfied with Mr. Young. I thought that loan was perfectly good.

Q. When did you first change your mind about that Mr. Coffin?

117 A. I don't know—about when I thought he was good.

Q. When you concluded that he did not have property enough to pay and that he was not solvent, when did you first make up your mind to that fact?

A. Not until after he went into bankruptcy.

Q. That was the 7th of June, 1902; it was up to that time before you discovered that Mr. Young was not solvent?

A. I supposed up to that time he was solvent.

Q. Do you ordinarily take chattel mortgages from your good customers when you feel that you are perfectly safe and sure and think they have ample property to pay their debts?

A. We don't do a very large chattel mortgage business. I did not have some trouble getting Mr. Young to give me a chattel mortgage.

Q. Do you mean to say that Mr. Young was perfectly willing to give you a chattel mortgage on all his logs and lumber without any objection at all?

A. He offered to do it yes sir. He offered to do it when he was trying to borrow the money. This was the fall before the mill burned. He didn't give a chattel mortgage the fall before.

Q. You postponed the matter and delayed taking the chattel mortgage until the following February, didn't want any mortgage?

A. We didn't take one. Mr. Young offered it to me in the fall of 1901.

Q. And you stood him off before taking it until February, 1902?

A. No, sir; we didn't stand him off. We didn't take it until 1902.

Q. After the bills of sale had been given by Mr. Young to the Waters-Clark Lumber Co. on March 3rd, 1902, did the Eau Claire National Bank release the mortgage they had on this lumber or did they do it before?

A. I think we took it off the record. We did not by agreement agree to release it before that time. I think Mr. Young let us know that he was about to sell that property.

Q. Who told you about it, Mr. Young or Mr. Clark or Mr. Lockwood?

A. I don't know who told me first. I don't remember when I did first hear that Mr. Young wanted to sell that lumber to the Waters Clark Lumber Co. I don't remember who told me first. I think Mr. Young asked my consent to the sale. That conversation took place probably in the Eau Claire National Bank. I don't remember what time of day it was nor who was present.

Q. You say probably in the Eau Claire National Bank, have you any recollection of any such conversation taking place?

118 A. I have no recollection of its being anywhere else and our conversations were ordinarily in the Eau Claire National Bank. I haven't a recollection of this specific conversation in which Mr. Young asked my permission to sell that lumber. I don't remember that Mr. Young asked me if he could sell those logs to the Waters Clark Lumber Co.

Q. Did he ask you if he could sell them to anyone?

A. Yes, sir. That conversation was in the bank. Mr. Young and myself *was* present. I don't remember the words of that conversation at all. The substance of it was talking about his selling the logs. He wanted to sell them, wanted to get permission to sell them. I did agree to release our mortgage if he could find a purchaser if we got the pay for them.

Q. Now these time checks that you held, to go back to that for a moment, were they the time checks for labor or were a portion of them for supplies and for stumpage and for different matters of that kind?

A. I think the most of them, nearly all, purported to be for labor. I think there were a few given for supplies. I know there were a few.

Q. And some I presume for logs that he bought from people who owned the stumpage?

A. Not that I know of? You mean those we held on March 29th? No I don't know that any of those were given for stumpage.

Q. I show you exhibit I Mr. Coffin being a check for $13,813.50 on your bank, signed by the Waters-Clark Lumber Co. with the notation "Young orders" what was that check given for?

A. It was given for Young orders. That did embrace or include the $5000 and some odd dollars of orders we had on February 20th, 1902. The balance of the $13000 would be made up of orders given either by Young or his foreman on those logs and on the upper logs too. That would be both on the upper and the lower logs; all of the orders that we had conected with either the lower or the upper logs at the time that check was given.

Q. This check is dated June 7th, 1902, the day that Mr. Young filed his petition in bankruptcy; now where did you get this remaining portion of this $13000 in time checks; you had $5,400 and something on February 20th, 1902, where did you get the balbalance?

A. What is the amount of that?

Q. $13,813.50.

119 A. Well I should say that $5437.42 of that amount was orders which we held on February 20th, 1902, and $8,403.24

was orders that we took—I don't know. I guess I am wrong about that; $5437.42 of orders we held on February 20th and the rest of them we took afterwards.

Q. The rest of them were time orders that you bought between that date and the date of this check; is that correct?

A. No, not exactly. The orders that we took that came in after the logs were sold to the Waters-Clark Lumber Co. we paid for the Waters-Clark Lumber Co. and that check was given to take up those as well as those we had taken before.

Q. Can you divide that, give us the number of time checks you bought while you held the mortgage on a portion of these logs, that is between February 20th, 1902, and March 29th, 1902, when they were sold to the Waters-Clark Lumber Co.

A. I don't think that I can say from any memorandum that I have here. I think that I can give the amount of orders that were held on March 29th. I think that was $8403.24. The amount that we held on February 20th was $5437.42. That would make $2965.82 we bought before the logs were sold to the Waters Clark Lumber Co. All this money represented by this check of $13,813.50 was as I understand it a part of the consideration paid by the Waters Clark Lumber Co. for those logs.

Q. After Mr. Young had asked permission to sell the logs to the Waters Clark Lumber Co. what further part in the transfer did you take Mr. Coffin?

A. I didn't have anything to do with it. I did not have any talk with Mr. Young or Mr. Clark about it. I did not at any time have any talk with Mr. Young other than his asking permission to sell the lumber and logs, relative to the transfer to the Waters-Clark Lumber Co. but generally regarding his selling the logs I did, a number of different times. It is not true that during the entire winter of 1901 and '02 this John Young claim was a source of great embarrassment to me as well as to the other officers and directors of that bank. It is not true that the matter was up repeatedly and discussed in directors' meetings. It is not true that many of the directors of our bank were of the opinion and so expressed themselves that the John Young claim was out of all proportion to what it ought to be. So far as I know the directors of our bank thought that that was a good loan and that John Young was solvent. I never heard any expression to the contrary. Never heard the question of his solvency or the advisability of carrying that loan questioned. I do not know who drew these bills of sale to the Waters Clark Lumber Co. I know who drew these chattel mortgages to the Eau Claire National Bank. Wickham & Farr did. I don't know which one but it was drawn in their office I understand.

120

Q. Do you know who employed them to do that or asked them to do it?

A. I think probably I talked with Mr. Wickham about it. The mortgages were dated February 10th because they were drawn that day. I know they were drawn that day because I asked to have them drawn that day and they were drawn the day that I talked with Mr. Wickham.

Q. Had Mr. Young been around again and asked the privilege of giving a mortgage or had you seen him in the mean time?

A. Well I haven't a very distinct recollection about it but my impression now is that Mr. Young was down at Madison at that time and we had the mortgages drawn and when he came home he signed them. I am not positive about that but that is my impression. My recollection is that he signed them the first time that he came into the bank after they were drawn.

Q. And your recollection is that he was at Madison at the time and that caused the delay of a few days?

A. I didn't say that was my recollection. That is my impression. I don't recollect where he was. I had them and when he came in he signed them. I think he was at the bank when he signed them. Not at my desk or some other desk. I think it was in the back room. I don't remember that anyone was present but Mr. Young and myself.

Q. Do you remember Mr. Coffin some few days before this action was commenced of my calling upon you relative to the claim now made by the trustee?

A. I don't remember when it was. I think you called on me once. I don't remember if it was before this action was commenced.

Q. Don't you remember that I went in and stated to you that the trustee claimed or in substance that the trustee claimed that
121 the giving of these mortgages and subsequent transfers and the whole transaction was a preference and that an action would be commenced unless we could settle it up in some way and asked you to pay it, pay back the money and divide it up among all the creditors?

A. I don't remember that you told me that.

Q. I am not trying to give you the words that I used; don't you remember of my saying to you that I would have to make a formal demand on you in order to commence the action, unless you would turn the thing back into the trustee's hands and let it be divided up in the bankruptcy court, or words to that effect?

A. No, I don't remember that that was the substance of what you told me. I don't remember what the substance was.

Q. Don't you remember that you told me that the matter was with your attorney, Mr. Wickham and I could see him about it?

A. I think I did. I don't remember what you told me but I think instead of talking to you at all I told you to see Mr. Wickham. I don't remember that you told me what you state now, what you imply that you did tell me. I don't remember that you did tell me that. I don't remember that you told me that you were the attorney for the trustee. I don't remember that you told me that the trustee was about to commence an action unless I would pay back the value of the property that had been turned over to us by these mortgages. I don't remember what you did tell me, except I remember that you spoke about it and I told you to see Mr. Wickham. I don't remember that you told me what was going to be done. I have not a certified transcript of the account of the Waters Clark Lumber Co. with the Eau Claire National Bank with me.

Q. Will you produce here your letter book containing any letters written by yourself or O. H. Ingram to the Dells Lumber Co. or the Daniel Shaw Lumber Co. relative to the sale of this lumber, or logs?

A. I haven't any such letters or any records of any or copy of them. I don't know whether the Waters-Clark Lumber Co. keep a separate set of books in that bank for their business transactions or not. The account or the record of the receipts and disbursements of the Waters-Clark Lumber Co. growing out of this long and lumber deal were not kept on the books of the bank. It isn't true
122 that their account was charged with each time order as they came in after they had bought these logs. It isn't true that Mr. Lockwood, vice president of our bank drew all those time orders. I never knew of his drawing the checks that paid the time orders.

Q. Didn't Mr. Lockwood attend to the business by settling up for the labor, the time checks that were against these logs after the Waters Clark Lumber Co. Had bought them?

A. No I should say that he didn't attend to it. He did some of the work undoubtedly. We have no logging contracts made by Mr. Young with various people on what is known as the up river logs that were turned over to the bank; we were never interested in them.

Q. A short time after you took this chattel mortgage on the logs Mr. Coffin, within a very few days, you started to foreclose did you not?

A. I don't remember whether it was within a very few days or not. We did start to foreclose. At the time we started to foreclose, I with all the rest did still think that Mr. Young was perfectly solvent and had plenty of property to pay his debts.

Q. How many times during the month immediately preceding the time these chattel mortgages were given did you try to get Mr. Young to settle up his indebtedness to the bank, many times or a few times?

A. Every time I saw him I tried to get him to reduce it. Sometimes he did do it as evidenced by the payments he has made on these notes. He did not reduce it as fast as we wanted him to. The reason Mr. Young gave for not paying up these notes when I asked him, was he claimed to be paying them up as fast as he sold lumber. The reason he gave for not paying them faster was because he didn't sell lumber.

Q. Then you understood that he had no means of raising money except as he sold lumber?

A. No, sir; that was his income, the sale of lumber, lath and shingles and wood. I have seen plaintiff's exhibit L before. That was delivered to the Eau Claire National Bank by Mr. John H. Young. It was delivered to me at or about the time of its date.

Q. Now did you understand at the time that you received that statement Mr. Coffin, that it was a mere estimate or guess of what Mr. Young owned, did you take it to be a detailed accurate statement?

123 A. As to the items and quantities I took it to be an accurate statement but as to the values Young always told me they were low or conservative and I believed him.

Q. Then you thought and always supposed when you received

these statements that when Mr. Young reported that he had a certain amount of pine timber on there that that was a scale measure and wasn't an estimate or guess but he knew it was there?

A. He always claimed that he knew it was there, yes, sir. This scale of the hardwood lumber doesn't purport to be given accurately, that is to say down to the exact number of feet but he always claimed there was more than the amount stated in there.

Q. I am asking you about this statement?

A. Yes.

Q. Then you did understand it was not purporting to be giving the scale measure of the lumber and the stumpage and things of that kind did you?

A. I say not down to the exact number of feet. That is what I understood the statement to be.

Q. As a banker do you usually take statements of this kind made by people who want to borrow money and who are already heavily indebted at their face, or do you make some allowances?

A. If a man tells me he has certain property I take it at its face. I don't make any allowances for its exaggeration in values or amounts; if he tells me he has 1000 feet of lumber I take it at 1000 feet.

Q. You lend your money and conduct your bank on that basis of giving a man credit for a statement as he presents it to you?

A. If I believe his statement at all I believe it to that extent yes sir. I did believe that when Mr. Young's mill burned up there that the logging outfit and things of that kind would be of as much value as while he was operating in that country because he expected to continue his logging operations in that country.

Q. You knew about that did you?

A. That he expected to.

Q. Yes?

A. He had a lot of stumpage left, timber left. I did not know that the time to take that off expired within two or three weeks. I was not told that repeatedly. I understood that Mr. Young was building a mill down in the western part of the city during the spring.

Q. I think you testified a moment ago that it was your understanding that a portion of the machinery had been taken from one of these mills at Cadott and removed to this one at Eau Claire?

124 A. I think all the machinery from the Cadott mill had been removed to this point and that all the machinery from the other mill for sawing lumber had been removed down here. That had all been done sometime prior to the time we took the mortgages. I did know from whom Mr. Young purchased the land on which the mill was built down here, what the site was. I did know from whom he had secured that site. I do not know the terms and manner in which he had bought.

Q. Did you understand that he had paid for it or did you know that he owed on it?

A. I didn't know anything about it. I never inquired about it. I think Mr. Young never stated to me that he was the owner of that

property down there, in his written statements at least. As a matter of fact I did not know that Mr. Young in his financial condition at that time could not buy and pay for that property down there. I thought he had plenty of means to buy the Valley Mill site if he wanted to.

Q. You had no means for supposing but what Mr. Young could build a mill out of his own means and without borrowing money at your bank?

A. Well he bought the frame of the mill already built, and was moving his machinery or had moved his machinery from the two mills up above into that, which he told me was practically all the machinery that he had. It would require some money to get that mill in operation but he thought not very much. He claimed he had sufficient means to equip that mill and start it up without borrowing anything from our bank

I should say with one or two exceptions we purchased the time checks or time orders signed by Mr. Young that we held on February 20th 1902 of J. E. Ragan. I should say we purchased the time checks which we bought between that date and the time when the logs were transferred to the Waters-Clark Lumber Co. from Ragan. In taking those time checks we did discount them at usual banking discount.

Q. From whom did you take the time checks that you purchased after the sale of the logs to the Waters-Clark Lumber Co.?

A. I should say from Ragan mostly, I don't remember.

Q. Were they discounted in the usual course of business and for the usual banking discount?

125 A. Well probably at first they were; after that they were—do you mean the orders of John H. Young?

Q. Yes those that Mr. Young himself had issued?

A. I think that we discounted—all that we discounted were discounted for Ragan. We did probably pay some for the Waters-Clark Lumber Co. I would think we probably did not discount those. My impression would be that they were cashed, all of them. I wouldn't say positively but that is my recollection.

Q. During the summer, fall and winter perhaps of 1901, Mr. Young paid you some money on notes which were taken up did he not; he took up some notes didn't he?

A. At what time?

Q. During the summer or fall or winter of 1901?

A. Paid some notes in full.

Q. Yes.

A. I think not. I think he didn't take up any notes. Our records over there will show.

Mr. BUNDY: I would like to have you produce any record which you have of notes which the bank had of J. H. Young indorsed by Mr. Ragan and which Mr. Young took up during the summer or fall or winter of 1901.

I think Mr. Young did not pay up in full and take up some notes in the spring of 1901. I think he did not make some payments on some notes during the year 1901 and the balance of such notes

renewed by other notes. The notes which I have presented here in court are the only notes I think which the bank held of Mr. Youngs during the year 1901.

Q. I wish you would look up your record, your discount record and bring it over. I would like to see it; can you send for it this forenoon. I would like to see it this forenoon?

A. I couldn't send for it. I should have to look it up myself. I will get it after I leave the stand. If I am not needed here in court I will. I, or the Eau Claire National Bank did not file any claims for liens against the logs in question on account of time checks I held. I have those notes that we had here yesterday with me. (Notes produced.) During the spring or summer of 1901 Mr. Young did not pay me some money on any indebtedness other than notes to apply on indebtedness which was not evidenced by notes. During the spring or summer of 1901 I do not remember of his paying me several thousand dollars at one or two different times. I have no recollection of his making those payments.

Q. Would your discount records show such payments?

A. Certainly if they were paid on anything other than notes, the discount register wouldn't show it. Time checks would be carried as discounts.

Q. Then if it was paid to take up time checks it would show on the discount register?

126 A. They were always taken up with notes and not with money in 1901.

Q. Now when you would have on hand quite a large number of these time checks which you say you purchased from Mr. Ragan in what manner would it be transferred, the indebtedness be changed from time checks to notes?

A. When the time checks were due notes were given and part of those notes were given to take up the time checks that matured on the dates of those notes.

Q. On whom would you call on or demand notes from, Mr. Young or Mr. Ragan—who would you call on to furnish notes to take up these time checks when they became due?

A. I probably talked with both of them about it. Mr. Ragan delivered all of the five notes to me.

Mr. BUNDY: I would like to see the discount register as soon as you can get it Mr. Coffin. I shall want to examine Mr. Coffin further when we get that discount register.

I am a stock holder in the Eau Claire National Bank.

Q. And were during the time in question?

A. I was from the start yes sir. I own a considerable portion of the stock of that bank. I don't know how long it will take me to look up that record I cannot form any idea how long it will take me to go to the Eau Claire National Bank and get that discount register for 1901 and 1902. I think that book that we used in 1901 and 1902 is now in use for current business.

Q. Will you bring over a transcript of all of the payments re-

ceived from or for John Young during the summer or year 1901 at noon, or at two o'clock?

A. Yes I can do that. I think I can do it in that time. I don't remember that Mr. Young made two or three payments to me along in the spring of 1901 in currency. I don't remember of any such payment at all.

Q. Are you thoroughly clear on it so you will testify he did not make any payment to you, a considerable payment of $1000 or more in currency?

A. I am very positive about it yes sir. Our discount register will show each separate payment that was made by Mr. Young or for Mr. Young on account of indebtedness of his to the bank during that time.

JOHN H. YOUNG called for the plaintiff, testified as follows:

Examined by Mr. BUNDY:

I live in this city. I have lived in the city of Eau Claire something over 20 years. At the present time I am in Madison
127 in the Secretary of State office. When I first commenced in business in the city of Eau Claire twenty years ago I was working for the Eau Claire Lumber Co. in the shingle mill. I worked for them quite a number of years. I could not tell you just exactly how many. Part of the time I was working by the day and part of the time by contract. In fact most of the time I was working by contract. By contract I mean manufacturing shingles on contract in their mill. The business consisted of taking the contract for cutting shingles at so much per thousand out of their logs. I employed my own help. After I quit that employment with the Eau Claire Lumber Co. I was at the Valley Lumber Co. and had sort of a trunk factory here. I was engaged in the trunk factory business four or five years.

Q. Running it with others?

A. I had a brother with me. The outcome of my trunk business was I sold it out. I did make an assignment at that time for the benefit of creditors. That was the year of the flood. I think it was 1884. After I quit the trunk business I was with the Valley Lumber Co. of this city. I was running a shingle mill by the thousand under contract or some arrangement that I had with the Valley Lumber Co. I worked for them in that capacity ten or twelve years I should think. I don't know just exactly, quite a while. At one time I did operate a shingle mill in this city. I couldn't tell the year I commenced that, but I did that during the winter. I worked for the Valley Lumber Co. in the summer and operated this mill in the winter time. My own mill. The character and capacity of the mill I operated in the winter was very small. I manufactured 12 or 15 millions. I used the buttings and slabs that I procured from the Valley Lumber Co. I think it was five years ago this winter that I quit operating my shingle mill here in the city of Eau Claire. The winter of 1898. I went up to Cadott the next year four years ago this winter, about the first of January, 1899, I think it was. I

was engaged in the shingle business at Cadott, manufacturing shingles. When I first started I did not manufacture anything but shingles.

Q. And for whom or under what arrangement did you have
128 at that time as to the sale of your shingles and who was to have them if anybody?

A. The Northwestern Lumber Co. The lumber out of which I made the shingles I got from William Irvine of Chippewa Falls, the Chippewa Lumber & Boom Co.

Q. What title did you have to the timber that you used and under what arrangement?

A. I had one year's lease of the timber with the privilege of renewal. The character of the timber I was using in that business was down timber and wind falls and such things as that on cut over lands. I have that contract with me (paper produced and marked for identification exhibit W). This contract marked plaintiff's exhibit W is the contract made between me and the Chippewa Lumber & Boom Co. on May 23, 1899.

Contract offered and received in evidence and reads as follows:

CHIPPEWA FALLS, WIS., *May 23d*, 1899.

Mr. John H. Young, Eau Claire, Wis.

DEAR SIR: Referring to your contract with us for pine shingle timber stumpage on certain lands of ours in town 28, range 6 west, said contract being your offer by letter dated January 3d, 1899, accepted by us by letter dated January 7th, 1899, and terminating June 30th, 1899, we hereby agree to extend the time on said contract from June 30th, 1899, to May 1st, 1900, as requested by you in conversation had this morning, and further agree to add the pine shingle timber from certain lands cut by us last winter and not heretofore included in your said contract, so that all the lands now embraced in your contract are as follows: All N. E. ¼; E. ½ of N. W. and N. E. ¼ of S. W. 19; All N. E. ½ 20; W. ½ of N. E. 21; N. ½ of N. W. and S. W. of N. W. 26; E. ½ of N. W. 27; N. W. of N. E., S. ½ of N. E. and N. W. of S. E. 28; W. ½ of N. E.; all N. W. ¼ and S. W. of S. W. 29; W. ½ of N. E.; all N. W. ¼ and E. ½ of S. E. 30; W. ½ of N. E.; all S. W. ¼ and N. W. of S. E. 31; N. W. of N. W.; S. ½ of N. W. and south ½ sec. 34; W. ½ N. E., and E. ½ of N. W. of sec. 35, town 28 range
6 West. Stumpage price and terms of payment to be and
129 remain the same as stated in said contract above referred to.

CHIPPEWA LUMBER & BOOM CO.

I hereby accept the above in all its terms, provisions and conditions.

J. H. YOUNG.

Paper marked for identification exhibit X.

I have not been able to find the letters referred to in that letter, the earlier letters.

Q. Can you tell us what the stumpage price per thousand was that is referred to there?

Defendant's counsel object as incompetent, irrelevant and immaterial. The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. Well, I don't know what you mean; do you mean the first contract?
Q. Yes, what was the contract price per thousand, the shingles?
A. 12½ cents per thousand.

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial and too remote. The court overruled the objection, to which ruling and decision the defendant duly excepted.

Q. I show you paper marked plaintiff's exhibit X, being a diagram of certain lands; is that a diagram of the lands on which you had a contract with the Chippewa Lumber & Boom Co.?
A. Yes, sir.

Exhibit X offered and received in evidence.
The following is a copy of exhibit X.

(Here follows diagram marked p. 129*a*.)

[4—800.]

Township No. 28 Range No. 6 West 4th.

No 163.
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130 While I was cutting shingles under that arrangement, I had an arrangement with the Northwestern Lumber Co. During the time I was cutting shingles under this first agreement I was borrowing some money of the Eau Claire National Bank. I was not depositing money or doing any business with them.

Q. How much capital did you take with you to Cadott when you first started?

A. I took nothing but the mill. I didn't have a cent.

Q. Where did you get the money with which you constructed that mill?

A. Mr. Barber, the Northwestern Lumber Co.; you ask what I constructed that mill with?

Q. Yes?

A. I got that through a note. By giving my note to the Chippewa Valley Bank. The note was for $500.00. That was used for setting up the mill, putting up the machinery. I owned at that time certain shingle mill machinery which I had used at my mill at Eau Claire. I had used that machinery all the time I was here. That machinery consisted of an engine and boiler and a drag saw. I didn't have a bolter then. I just had some little cut off saws. I put in the drag saw one winter, and shingle machines was all I had—clipper. I did not have any rotary or lumber machinery. After the first year I did make some arrangement with the Chippewa Lumber & Boom Co. for the right to use down timber on their land. Some of it was the same lands described in this contract. It was the same land practically. I made that arrangement that next year after that contract ran out. This expired May 1st, 1900. The other contract I made after this one expired with the Chippewa Lumber & Boom Co. was in writing. I think I have looked all over for that contract. I have looked in the place where I usually kept these agreements of that kind. I have not been able to find it. I know without referring to that contract what that arrangement was.

Q. I ask the witness to state what that second arrangement with the Chippewa Lumber & Boom Co. was?

Examined by Mr. WICKHAM:

Q. Was the contract evidencing the second arrangement made in a similar manner to the contract evidencing the first arrangement by which you received a letter press copy, and the Chippewa
131 Lumber & Boom Co. reserved the original?

A. I don't know whether it was a letter press copy or not. I think not Mr. Wickham. The Chippewa Lumber & Boom Company have got the original.

Mr. WICKHAM: I object to the evidence as not the best evidence.

Mr. BUNDY: The terms of the contract are perhaps not very important. It is only the nature of the claim he had there. I did not suppose any such objection would be made and for that reason I did not telephone Mr. Irvine. I would like to put in the evidence and we will send for Mr. Irvine and have him bring down the original if he has it. If we do not produce it the court can strike out the evidence.

The COURT: With that understanding I think the court will take the evidence.

To which ruling and decision the defendant duly excepted.

Q. What was that other arrangement as you remember it Mr. Young?

A. Well the balance of the timber——

Mr. WICKHAM: It is understood this evidence is all subject to my objection?

The COURT: Yes.

Q. What was the arrangement which you made with the Chippewa Lumber & Boom Co. under which you operated after this first agreement had expired May 1st, 1900?

A. I made a new arrangement with them for a lump sum, paid them $1400 for it, for the balance that was left on the land. On the lands described.

Q. State as to what if any timber was limited in that agreement in which you were to take it off?

Mr. WICKHAM: I object as not the best evidence.

The COURT: It will be received with the same understanding as before.

To which ruling and decision the defendant duly excepted.

A. Yes, there was a time limit. I think that time limit was May 1st, 1902. I have forgotten the dates. It was made May 1st, 1900, to run one year I think. Then it would expire May 1st, 1901. That arrangement was subsequently renewed for another year.

Paper marked for identification exhibit Y.

Q. I show you a letter marked plaintiff's exhibit Y Mr. Young and ask you if that is the letter by which the Chippewa Lumber & Boom Co. extended that second agreement to May 1st 1902?

A. Yes sir.

Exhibit Y offered and received in evidence and reads as follows:

Chippewa Lumber & Boom Co.

CHIPPEWA FALLS, WIS., *May 21st*, 1901.

Mr. John H. Young, Eau Claire, Wis.

132 DEAR SIR: We understand that you have not fully completed cutting the pine and hardwood saw timber on our lands on town 28, range 6 west, described in our timber license to you, dated October 9th, 1900, and that you desire another year from May 1st, 1901 in which to cut and remove said timber.

In accordance with your wishes, we hereby extend the time for the cutting and removal of said timber under the conditions of the timber license above mentioned, from May 1, 1901 to May 1st 1902, on all the lands described in said timber license *except the following described tracts* which have been sold by us, *and are not therefore included in this extension,* to wit: Northeast quarter of Southeast

quarter, and south half of southeast quarter of section thirty (30); the northwest quarter of the northeast quarter; the north east quarter of the northwest quarter, and the north fractional half of the west fractional half of Northwest quarter of section thirty one (31) in said township twenty eight (28) north of range six (6) west. On the above described tracts *no* authority or permission to cut timber is given, for the reason above stated.

Very truly yours,

CHIPPEWA LUMBER & BOOM CO.
WM. IRVINE, *Mgr.*

It was under that renewal of the original license dated October 9th 1900, that I operated during the winter of 1901 and 1902. I never thereafter procured another extension of that license after May 1st 1902.

Q. Did you after the first year's operation at Cadott, enlarge your business by putting in a lumber sawing plant?

A. Well I enlarged it in this way. I bought an old mill that was out in the country and fixed it up. That was after I had quit operating in connection with the Northwestern Lumber Co. I bought that old mill from a man by the name of Fred Gessner.

Q. What if any improvements did you put in it?

A. I put in a shingle mill and a lath mill and fixed the mill up generally all over. After I had done that I had two mills, one at Cadott and one out in the country. I moved most of the machinery in the Cadott mill out to the mill in the country. I moved the
133 shingle mill and a lot of the shafting that I used in constructing the other and the belts and the saws and everything I took out there. I never operated the Cadott mill after I moved it out there.

Q. What year was it that you moved the Cadott machinery out to the mill in the country?

A. Now I couldn't say just what year it was. I will tell you Mr. Bundy; I think I operated the shingle mill in Cadott part of the summer and after that I moved the shingle mill out in the woods. That was in the season of 1900.

Q. What was the capacity of this mill, the ordinary capacity of this mill you operated in the country?

A. Well I had a circular — I could cut probably 12 to 15 thousand, maybe more. Of course that varied. Sometimes we would run the shingle mill all the time and if we cut shingles all the time we would cut probably 50 or 60 thousand a day, sometimes more; it was owing to the timber. That timber didn't make the shingles very fast. That was when I operated the shingle mill alone. I did operate the shingle mill and the lumber mill together, but we couldn't run it together. We didn't have power enough.

Q. Where did you get the capital that went into this new mill, repairing it and buying it, repairing and buying this new mill?

A. I got it through my orders, time checks—from the Eau Claire National Bank. I first commenced doing business with the Eau Claire National Bank in the fall of 1900. At the time I bought the

new mill or about that, I think it was. I am not sure about that but it was somewhere at that time.

Q. What was your first connection with the Eau Claire National Bank, what did you do first when you first commenced banking there?

A. I borrowed $2000 of them. This as I recollect it was in the fall of 1900.

Q. Who did you negotiate that loan with, what officer of the bank?

A. Well I saw Mr. Coffin first and he told me to go to Mr. Ingram. I did so.

Q. What conversation did you have with Mr. Ingram relative to your business and what you wanted to do with this money?

A. Well I didn't have any conversation at that time with him, at the time I borrowed it. I told him I wanted to get $2000 and he asked me some questions and in fact Mr. Ingram was the one that gave me a letter to Mr. Irvine to go up there and buy the timber or recommended me for the timber. Mr. Ingram asked me
134 about my facilities for cutting it. I did tell him to what extent I had built my mill or completed it.

Q. Was Mr. Ingram told at that time what interest you had in the timber and where you were going to get the stumpage?

Mr. WICKHAM: I object to that as leading.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. Yes sir.

Q. And what if any thing was said at that time between you and Mr. Ingram when you borrowed this first $2000?

A. I told him the circumstances and he told me I could have it, and he told Mr. Coffin to let me have it as I understand it. In fact I got it after I had seen Mr. Ingram.

Q. What did you say to Mr. Ingram if anything as to the timber you were going to operate your mill on?

A. I told him I had made arrangements with Mr. Irvine and was going to have the timber. He asked me what they were and I told him. That first $2000 I borrowed I left it in the bank. I had a deposit there subject to check. The money was used generally for the business—everything.

Q. Well Mr. Young going back to this first time you went to Mr. Ingram about this loan, when you had your talk with him about your arrangements that you had made to procure timber, just state what Mr. Ingram asked you to do if anything and what you stated to him?

A. He asked me if I had a contract and I told him I did have. I didn't have the contract with me to show him, but I told him as near as I could that I was to give 12½ cents per thousand for the shingles that I cut. This was the old contract. This was when I borrowed the $2000. When I borrowed the $2000 I don't know as the old contract had expired.

Q. Well now as I understand you you borrowed the $2000 after you had quit sawing shingles for the Northwestern Lumber Co.?

A. Oh yes, that is so. Excuse me, I had forgotten that.

Q. You borrowed that $2000 after you had commenced a new operation and under the new arrangement?

A. Yes sir.

Mr. WICKHAM: I object as leading and move to strike out the answer.

The COURT: The motion will be overruled.

To which ruling and decision of the court the defendant duly excepted.

Q. Now the question is, at the time you borrowed that money first did you have any conversation with Mr. Ingram relative
135 to the new arrangement or any arrangement you had made with the Chippewa Lumber & Boom Co. for timber?

A. Yes I told him I had a contract. He did ask me or I did tell him what the contract was. I told him that I had bought it or a lump sum.

Q. Did you tell him as to whether or not you had paid for it?

A. I hadn't at that time but I was paying for it. I did tell him how much I was to pay for it; I paid for it at different times.

Q. I mean how much the purchase price was?

A. The purchase price, yes.

Mr. WICKHAM: I object as leading.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

There was nothing else said as to the terms of that contract. I just told him that I had purchased and gave him the purchase price of it. That was all. I said I deposited that $2000 in the Eau Claire National Bank and used it in the general business; I said that was subject to check. After that $2000 was drawn out I have not since that time ever had any open account subject to check in the Eau Claire National Bank.

Q. Now subsequent to that time and after that $2000 was spent, in what manner have you paid your repairs and supplies and supplied your mill with logs, so far as paying for the same was concerned?

A. With time checks. The Eau Claire National Bank has paid some of those time checks and of course there was other people had some. In fact I took some up myself.

Q. What was the custom during the year 1901 until the spring of 1902 with reference to your giving notes to the Eau Claire National Bank or giving notes to Mr. Ragan which went to the Eau Claire National Bank?

A. When a certain number of time checks were due and the bank had got them, Mr. Coffin called me in there and he made out a note and gave me the note and I took it up to Mr. Ragan and had him sign it and I either sent it or brought it back to Mr. Coffin. I have seen these notes that have been introduced in evidence. These notes are the notes that were given in that manner with the exception of one of them. That is the $8000 note.

Q. Now after the $2000 that you borrowed had been ex-
136 pended which was the next loan that you made, which one of these notes was the next one?

A. I think I had checks out $8000 in time checks and Mr. Coffin called me in there and told me that I had got my limit of $10000 and made out that note and I signed it. I think that is the way. I don't think I gave the notes before the time checks was due. The $8000 note as I remember it was the next note that I gave.

Q. That was a note direct from you to the bank and not indorsed by Mr. Ragan?

A. No sir. There was no indorsement on it. I did not have during the time I was conducting this business in 1901 and up to the spring of 1902, any bank account with any other banks than the Eau Claire National Bank.

Q. Did you at any time Mr. Young have any conversation with any officer of the bank, Mr. Coffin or anyone else, relative to the time when your right to take timber off land expired?

A. I showed Mr. Coffin the contract; the renewal of the contract. I do not know when that was. I think it was when I got it because I was up to Chippewa and got it and came right down town here. That renewal which I spoke of was in the form of a letter written by the Chippewa L. & Boom Co. to me marked exhibit Y.

Q. I will ask you as to whether or not that is the letter you showed Mr. Coffin?

A. It was either the letter or the other, I would not be sure which one it was.

Q. What if any information did you give Mr. Coffin or any other officer of that bank as to the date when your right to remove this timber expired?

A. I told them it expired on the last of May or first of May, whatever it says there; first of May 1902. This conversation took place in the bank. He was always asking me questions about this thing and that thing. It was some time when I was in the bank. I couldn't tell when it was but it must have been the time when I received it, because I went from here to Chippewa Falls and got it and then came back again.

Q. This seems to have been mailed to him, was it delivered to him or mailed to him?

A. Well I meant that other one, that one was mailed to him. There is another contract of some kind besides the original one that expired the year before, May 1, 1901.

Q. That was the first contract that you made with him for $1400?

137 A. Yes I can't remember just which one it was but I know that I showed them to him and what time I can't tell, I told him about it. I paid for supplies, groceries and things of that kind that I used in my logging operations during the year 1901 and 1902 with time checks, with the exception of the time I had that bank account. I paid some out of that. That was the year before. Time checks the winter of 1901 and '02. I paid for blacksmithing in the same way. I did not pay for any of the ex-

penses of conducting my logging operations to amount to anything, other than by time checks.

Q. State as to what proportion of these time checks were ultimately taken up by the Eau Claire National Bank as near as you can?

A. Pretty near all of them, probably during the whole time there was maybe $1500 or $2000 taken up by other people, Mr. Monroe up to Cadott and I think the Bank of Eau Claire had some and some individuals.

Q. To what extent during the year 1901, the whole year, and up to the spring of 1902 were the bank officials urging you to pay up your indebtedness?

A. Yes sir they were, reduce it. They were at me whenever I went there. Mr. Coffin had those conversations with me. The reason he gave for wanting me to pay up or reduce my indebtedness was he said the stock holders were kicking and going for him. That continued for a couple of years I should think prior to the time that I gave certain chattel mortgages in February 1902. I don't know. It was quit a long while. I couldn't tell just when. Of course at first he didn't urge me so much but after the debt began to accumulate they did.

Q. Now Mr. Young I wish you would describe to the jury the machinery which you had in this mill out in the woods from Cadott on the 1st of February, 1902, and before the fire?

A. Well there was a boiler and an engine, a pony pump, a circular, trimmer, edger and two cut off saws and a gang of saws for cutting up lath stuff, two lath mills and a bolter, all the machinery connected with it such as they use in the mills nowadays; two hand shingle machines with all the equipments besides all the property that was out there and which I could not enumerate, all the machinery that is used in a mill, gummers and the whole mill outfit complete in every respect. It was there on February 1st.
138 There was nothing but what was used in a mill nowadays. On February 1st there was no machinery in the old mill at Cadott.

Q. What if any machinery which belonged to you had been removed from either of those mills to the new mill you were starting to construct in Eau Claire on February 1st?

A. There was a boiler and an engine and a lot of truck that I could not use out to the other mill. That was taken from the shingle mill at Cadott. Not a bit of the machinery which I used in the woods mill was removed to Eau Claire. The mill out in the woods burned up. I think it was on the 14th of February.

Q. To what extent was the loss, how much loss was it, what portion of it was lost?

A. Everything was gone, every single thing. I know as to whether or not the insurance adjust or made an adjustment of the loss. The insurance adjustor came here and I went up with him and we went out to the mill. We was out there a whole day and we went and got the sizes and dimensions of everything and the shafting laid there and the iron on the pulleys and boxes and everything

and he put them down, put everything down, the sizes of the boxes and the shafting and measured them up thoroughly and came down here and went over to Mr. Coffin; Charles Coffin over to the Phœnix and Mr. Coffin made out an estimate of it, just what it was worth, just exactly what it was worth now. Of course the boiler and the engine and some of the machinery was old but he didn't put that in at its full value. That was second hand stuff. I did give Mr. Coffin, the cashier of the Eau Claire National Bank after that, some information as to the amount of that loss. I told him. That information was given to Mr. Coffin prior to my giving these chattel mortgages. I told Mr. Coffin the cashier, the loss amounted to over $7000.

Q. Did you inform him as to where you got that information—from what source?

A. Yes sir he knew it. I did not have any other source of income or any other business during the years 1901 and 1902 except my busines at Cadott. The property I owned on February 20th 1902, other than the logs that I had put in during the previous winter, the lumber, lath and shingles which were at Cadott
139 in the mill, my interest in the stumpage contract which was to expire on May 1, 1902, a certain 40 acre tract of land, the sleighs, wagons, carts, trucks, blankets, loading chains, blacksmith outfit, teams, logging rutter, hay, road sleigh, horse and buggy, my home in this city and certain accounts receivable was this mill down at Shawtown. I had no other property besides this mill at Shawtown and the property I have described. The mill I owned at Shawtown was located on the Valley Lumber Co.'s land, formerly the Valley Lumber Co.'s site. I had on February 20th or prior to that time purchased from the Valley Lumber Co. that site. I think I purchased it the year before. I don't know just what date. I think it was in September, 1901. I am not sure. The consideration I agreed to pay for that land was $2500.00.

Q. What title did you have to the land, if any; what was your contract or arrangement with them?

A. I cannot tell you just what the contract is. There was a contract. There was a land contract. I never paid a cent of the purchase price. After procuring this land contract in which I agreed to pay $2500 for the land, I did commence to rig up a mill there.

Q. On February 20, 1902, to what extent had you got that mill in shape to operate?

A. Well I had done considerable the fall before. I hadn't done much of anything only getting the machinery there in the spring.

Q. Was the mill complete that you were to use, the old mill building of the Valley Lumber Co.?

A. Yes sir, the old shingle mill part. I had attached the machinery which I removed to that mill to the mill itself in the usual and ordinary way. I had not put in any engine. I was intending to trade the engine I had off for a larger one. I had put in a boiler. There were put in in good shape; bricked up. I had partially put in a rotary. I got that from the Knapp Stout Co. that is some of it. They had been attached to the mill building. I had not put in any shingle mill. The shingle mill was burned up.

Q. You intended later to remove them?

A. Yes I intended to remove them. What do you mean—what time? On February 20th 1902 those things were not attached then. The boiler was. I don't know that they were bricked up at
140 that time. They were in the mill, set in place, not bricked up. I did on or about February 1st 1902 give to Mr. Coffin a statement of certain property which you show me, and which is marked exhibit L.

Q. What if any information did you give to Mr. Coffin as to the correctness of those items and the amounts and values?

A. I told him it was a statement I had made up hurriedly and it was only made up, just a guess, that I had guessed at most of it. I told him he had better send some one up there and look for himself. He said all right. He did send some one. It was Mr. Lockwood and Mr. Clark. One item on this statement is 2,000,000 of pine at $3.00 and carried out out at $6000; that refers to the timber left on this land. That is stumpage.

Q. State as to whether or not you gave any information to Mr. Coffin as to how you arrived at that amount?

A. I told him it was not reliable because I couldn't tell. It was just merely a guess. This timber was down timber, wind falls.

Q. In what manner and how did you figure in arriving at that price of $3.00 per thousand for that down timber?

A. I thought it was worth $3.00 to me as long as I had my mill there My intention relative to continuing the operation of that mill out in the woods was I intended to leave the old engine and boiler there and the circular; the rotary saw. The purpose of doing that was for the purpose of manufacturing what timber there was on that provided I got the contract the next year which I could have got, and sawed it up. I think I could have got a contract. I might have.

Q. Would that timber in your judgment have been worth $3.00 per thousand to anyone not owning the mill there?

A. No sir it wouldn't be worth a cent. The value of that stumpage was no good after the mill burned I could not take that down timber and log it and put in into the river and realize enough at that basis to get $3.00 a thousand. I did have experience in attempting to log that kind of timber into the river to my heart's satisfaction. On this statement 300,000 feet of hardwood, $3.00 $900.00 refers to the same thing only that was standing. That was hardwood instead of pine.

Q. What effect did the burning of your mill have on the value of that hard wood stumpage?

A. That would have about the same effect. It was not a
141 very good class of hardwood because it had all been culled out previously.

Q. The first two items on this statement are as follows: "800,000 feet of pine lumber at $10.00, $8,000. 20,000 feet of hardwood lumber at $8.00, $1600. I will ask you as to whether or not that is the same lumber that was embraced in the chattel mortgage which you gave on or about February 20th?

A. It was, yes, sir.

Q. What if any information did you give Mr. Coffin relative to the lumber as to whether or not it had been scaled or otherwise?

A. I told him that was only a guess too.

Q. What if anything burned at the time of the fire besides the mill and the machinery in the mill?

A. There was carts, some wagons and sleighs and very little lumber, not much and some shingles and lath, I couldn't tell you how many. There was more shingle than there was lath. They were piled up around the mill, close to the mill. I think there was two pairs of sleighs burned at that time. I think there was two carts and a wagon and a pair of road sleighs.

Q. On this statement is 1,384,000 feet of logs banked on Yellow River at $8.00 per thousand, $11,072; I will ask you if those are the same logs which are embraced in the chattel mortgage?

A. Yes, sir. They are the same logs subsequently embraced in the bill of sale to the Waters-Clark Lumber Co.

Q. And 250,000 feet on skids in woods at $5.00, $1,250. What became of those logs on skids if you know, Mr. Young?

A. I don't know.

Q. The next item on this statement is 2 mills $2500, $5000. I will ask you Mr. Young whether that refers to the mill at Eau Claire or the mill out in the woods and the mill at Cadott?

A. It means the whole thing. I had been putting that in all the statements I had ever given them. I had been giving him statements before that. By these two mills was meant the machinery that I owned.

Q. Did you at the time you gave to Mr. Coffin this statment or at any other time discuss with him the meaning of that term and what it embraced; did he ask you about it?

A. What do you mean?

Q. That item of two mills?

A. Yes, sir. One item here is 40 acres of land at $7.00;
142 $280.00; that land was where the mill was located. I did own that land on February 20th.

Q. There is an item here, 6 pairs sleighs at $50.00, 3 wagons at $40.00, 4 carts $50.00; 3 pair trucks $50.00 each; now Mr. Young in putting these valuations on this statement furnished, how did you arrive at those figures?

A. I thought they was worth to me that as long as I was using them there and had them. They was worth that much to me. To sell them at that time you couln't realize as much out of them. I don't think you could get over probably half of that for them, maybe not that much. That same thing is true as to the blankets, loading chains and other camp outfit. The valuations I put in were what they were worth to me to use. There is an item on this statement of 20 tons of hay at $8.00 a ton $160.00; some of it was located there and the rest had been eaten up. I had that in the fall. That hay was hay that was being used in my logging operations.

Examined by Mr. WICKHAM:

Q. Hay that had been eaten up?
A. I didn't say that. I said some — it had been eaten up.

Examined by Mr. BUNDY:

Q. Now, Mr. Young, I want to take up with you the value of the property which you had on February 20th which was not included in the mortgages you gave on that date to the Eau Claire National Bank and after the fire had destroyed your mill; now on February 20th, 1902, what was the condition of the road and weather for logging operations after that?

A. The weather was warm and the roads had been destroyed. There was no opportunity whatever for putting in logs from this land between that and the first of May, at Cadott, and at this mill. In view of that the stumpage contract which I had there on February 20th, 1902, was of no value to me whatever. It was not of any value for the purpose of selling to anybody.

Q. After the fire had destroyed your mill and part of your sleighs and outfit there what would you say was a fair cash value or fair value of those sleighs that you had left?

A. I don't know; I don't think you could get over half
143 value for them. You might and might not. I mean half of the value as stated on this exhibit L. I said that at my request the bank sent some one up to look over this property, Mr. Clark and Mr. Lockwood. They did look the property over at that time.

Q. Examined the logs and property and lumber that was there?

A. They went through the lumber yard and they went up and examined the logs thoroughly, yes sir. Mr. Lockwood and I looked over my accounts receivable. We looked them over together and I pointed out this one and that one as best I could. The books are in bad shape and we could not get at it very clearly anyway. We looked over the books. I told Mr. Lockwood some of the accounts were good and others were not good. I remember I pointed out that Boyle account. I think there were some others. The Boyle account is $960.00.

Q. In looking them over what did you say to him about the character of those accounts and value?

A. I told him they were merely a guess. You mean that is on that (indicating). I told him some was good and some was not good.

Q. Are you able to state at this time, Mr. Young, as to how many of those accounts have been collected or were collectible or were good?

A. I think I could, yes, sir, by looking at the list. I could not from memory (paper shown witness).

Q. Just read over the accounts and then if you recollect whether they were good on February 20th, 1902, you may state; state if it was afterwards collected. Perhaps if you took time at noon and went over that you could do it quicker?

A. I think so, yes, sir. I don't want to do it unless I can do it right.

Q. Well have you any figures or records from which you can tell what was collected or is it just a matter of recollection?

A. It is just a matter of recollection. I said in addition to the property mentioned on this list that I had a house and lot in this city. I think that house in its condition as it was on February 20th, 1902, was worth about $3000. There was some incumbrance on that house and of record on that day. It was a mortgage of $1400.

Q. State what purpose that house and lot has been used for by you?

A. I have always lived there ever since I bought it. I forget the year that I bought it but it is about ten years I guess. It is my homestead.

144 Q. I will ask you, Mr. Young, as to whether or not this list of accounts on exhibit L or list of debts which you have put in exhibit L of people that you owe, whether that was taken from books that you kept?

A. Yes, sir. That list does not include accounts or debts that I owed which were evidenced by notes and not on my books; there was nothing on the books in regard to notes. I did owe debts at that time and on February 20th, 1902, which did not appear on my books or which did not appear on this list which I furnished. At the time I filed my petition in bankruptcy, I remember of signing a statement of the debts that I owed at that time as near as I could remember them.

Q. Did you attempt to give as near as you could at that time the time when such debts were contracted and when you owed them?

A. I did to the best of my ability.

Q. Have you looked over this list, Mr. Young, for the purpose of refreshing your recollection as to whom you owed on Febryary 20th, 1902, and the amount of such indebtedness?

A. I didn't look it over but you read it to me. I think that would enable me to give a complete list of my creditors on February 20th.

Q. Now state to the court please, the persons you owed on February 20th, 1902, and the amount of said indebtedness?

A. Just read them from this?

Q. I want you to testify from what you recollect. If that aids you any in giving a list of them you may use that?

A. I could not enumerate them but by reading them over I could tell them at once. At the time that I filed my petition in bankruptcy and filed the exhibit of which this purports to be a copy, I did look up to determine the amount that I owed each of my creditors. I don't know if I could state at this time, without again looking it up, from memory as to all of them. I might miss some of them. I did on February 20th, 1902, owe Nichols and Dean of St. Paul, Minnesota. The amount of that indebtedness was some $80.00 I think, $60 to $80. That is signed by myself and at the time I signed it I knew the amount of these various indebtednesses.

Q. With that information you may use this schedule for the purpose of refreshing your recollection as to the amount of said indebtedness.

Mr. WICKHAM: I object as incompetent, irrelevant and
145 immaterial.

Mr. BUNDY: We don't offer it in evidence.

Mr. WICKHAM: I don't know any rule of law by which Mr. Young can make up a list like that that he now knows nothing about and use that in evidence here.

The COURT: The counsel are not seeking to use that in evidence but it is signed by the witness and I think he may use it as a memorandum from which to testify.

Mr. WICKHAM: The witness has already stated that he doesn't know the amounts.

The COURT: He may not be able to remember accurately without his memorandum, the amounts. I think he may use this as a memorandum.

Q. How much did you owe Nichols & Dean of St. Paul on Feb. 20th, 1902?

Mr. WICKHAM: I object on the ground that there is nothing on the memorandum before the witness to indicate what he owed Nichols & Dean at that time.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. $88.65. I did owe Swift & Co.

Q. How much?

Mr. WICKHAM: I make the same objection.

A. $24.57, I think it is. It is torn off here. I did owe W. J. Davis of Eau Claire on that date.

Q. How much?

Mr. WICKHAM: If it be understood my same objection applies to all this testimony then I won't need to repeat it.

The COURT: Yes it will be so understood.

Mr. WICKHAM: I call the court's attention to the fact that the memorandum which the witness has does not show what amount of money he owed those different parties at the time referred to.

A. I do know irrespective of that memoranda that I have in my hand, that I owed the parties you have asked me about at that time. I do know irrespective of that statement that I owed them certain amounts on February 20th, 1902. The memorandum which I have in my hand and signed by myself is one of those made at the time I filed my petition in bankruptcy. At the time I filed my petition in bankruptcy and signed my memorandum I have in my hand, I did make an investigation and looked up for the purpose of determining the amount I owed those respective parties.

146 Q. Did you on February 20th 1902 owe Eugene Martin of Chippewa Falls?

A. Yes sir.

Mr. WICKHAM: I object to the question as leading. The court

overruled the objection, to which ruling and decision the defendant duly excepted.

A. $75.

Q. Now Mr. Young you may tell us what other people you owed on that date and the amounts of such indebtedness?

Mr. WICKHAM: This is all under our objection.

The COURT: Yes.

Objection overruled. To which ruling and decision the defendant duly excepted.

A. Eau Claire Boiler Works	$175.00
J. M. Vintgenda	48.90
J. E. Ragan	350.00
Mrs. Sallie Moon	6,000.00
Eau Claire Mill Supply Co.	373.37
It is here, but I think it is $377 and some cents.	
S. C. Brooks	95.65
Phœnix Man. Co.	20.00
Eau Claire Grocer Co.	1,500.00
Henry Frizzell	117.68
Dells Milling Co.	75.00
Frank Zimmerman	25.00
Standard Oil Co.	38.50
Alex Limtz	150.00
A. A. Cutter	35.45
Peter Dietzler	40.88
W. S. Monroe	25.00
S. R. Keiser	50.00
Fritz Miller	50.00
James Conley	364.50
Daniel Shaw Lumber Co.	100.00
Bert Kennedy	50.00

I owed that on February 20th. I guess that is all.

Q. On February 20th 1902 do you recollect whether there had been anything paid on Mrs. Sallie Moon note?

A. That was paid afterwards. What do you mean when this was made out? On February 20th 1902, no part of Mrs. Moon's indebtedness had been paid.

Q. And some had subsequently been paid?

A. Yes sir but there may have been some paid before. I wouldn't swear to that. There was some of it paid. There was some of this indebtedness which I have read into the record secured on February 20th 1902. Mrs. Moon was by an indorser. I think none of the rest of it was secured in any manner. This indebtedness was in addition to what I owed the Eau Claire National Bank and in addition to what I owed the Valley Lumber Co. on the land contract for the purchase of the mill site and in addition to the $1400.00 mortgage I owed on my house. I think some part of this indebted-

ness which I have read into the record here was covered by time checks.

147 Q. Well look them over again?

A. I don't know what you mean exactly.

Q. Were any of these creditors and names you have read laboring men in your employ?

A. I could tell by looking at it. (Paper shown witness.) I owed Nichols & Dean for hardware; Swift & Co. for meat; W. J. Davis for flour and feed; Eugene Martin for some logging equipment I bought of him; Eau Claire Boiler Works for a boiler and smoke stack I was going to use that here in Eau Claire. I owed J. N. Vintgenda mostly for shoeing horses; S. H. Monroe for supplies; J. E. Ragan for supplies. By supplies I mean merchandise. Mrs. Sallie Moon borrowed money; The Eau Claire Mill Supply Co. for machinery; That was evidenced by note. Mrs. Sallie Moon's debt was evidenced by note. S. C. Brooks was for merchandise out of his store; Phœnix Manufacturing Co. for balance on a fire front on a boiler. The fire front cost more than that but that was the balance. The Eau Claire Grocer Co. was for groceries. Henry Frizzell was for hardware and things that I had in his store. He kept a hardware store at Cadott, dishes and such things as that. Dells Milling Co. flour and feed; Frank Zimmerman, flour and feed; The Standard Oil Co., oil. Alex Lintz for hauling lumber and shingles and lath and rent for grounds that the lumber was piled on. A. A. Cutter merchandise I got out of the store for the camp. Peter Dietzler, planing lumber. W. S. Monroe was for a cart that I got of her; that was a woman. S. R. Keiser, merchandise; Fritz Miller, blacksmithing; James Conley, logs that I bought of him. The Daniel Shaw Lumber Co. was a note on an account that I had with them. Bert Kennedy was for hay and one thing and another, logging supplies.

Q. In addition to those debts that you have testified to Mr. Young did you owe large sums for labor in putting in logs which were evidenced by time checks?

Mr. WICKHAM: I object to the question as leading and calling for a conclusion.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

Q. On February 20th 1902?

148 A. Yes sir. This indebtedness that I have testified about was in addition to the indebtedness evidenced by time checks. The note I have testified about to the Daniel Shaw Lumber Co. was not indorsed by any person other than myself. The note to the Eau Claire Mills Supply Co. was not indorsed by anyone besides myself. I presume they got it cashed at the bank and they had to indorse it in order to get it.

Q. I didn't mean that but are all the debts which you have read into the record and which you owed on February 20th, 1902, all of the unsecured debts of which you know that you owed on that

date except what you owed to the Eau Claire National Bank and what you owed on time checks?

A. Well yes, as near as I can remember.

(Paper marked for identification exhibit Z.)

Q. Mr. Young I show you a paper indorsed Chippewa Lumber & Boom Co. with John Young, stumpage contract, marked plaintiff's exhibit Z; I will ask you if that is the contract you testified to this morning that you had with the Chippewa Lumber & Boom Co. for the stumpage?

A. Yes sir. That is my signature and the signature of Mr. Irvine, the manager of the Chippewa Lumber & Boom Co.

Mr. BUNDY: We offer exhibit Z in evidence.

—. I testified this morning that the price I paid for all the timber on the land described in that contract was $1400.

Q. On reading the contract do you want to change your evidence on that point?

A. It is $1450 instead of $1400. I had forgotten that.

Exhibit Z received in evidence and reads as follows:

"Articles of agreement made and concluded this 9th day of October, 1900 by and between the Chippewa Lumber & Boom Co. a corporation duly organized and existing under the laws of the state of Wisconsin, and having its principal office in the city of Chippewa Falls, Chippewa County, Wisconsin, party of the first part, and John H. Young, of the city of Eau Claire, Eau Claire County, state of Wisconsin, party of the second part,

Witnesseth, that the said party of the first part for and in consideration of the payments hereinafter mentioned to be
149 made by the party of the second part to the party of the first part has agreed and by these presents does agree, to sell and convey to the party of the second part as much of the merchantable pine and hardwood saw timber now standing, growing or being on the following described lands situate in Chippewa County, state of Wisconsin, as he may remove prior to May 1st A. D. 1901, to wit: the northwest quarter of southeast quarter of section 9; east half of northwest quarter, and east half of southwest quarter of section 19. The northeast quarter of section 20; the west half of northeast quarter of section 21; the northwest quarter of section 26. The northeast quarter of the northwest quarter and south half of northwest quarter of section 27; the northwest quarter of northeast quarter and the south half of northeast quarter and north half of southeast quarter of section 28. The west half of the northeast quarter of the northwest quarter and the southeast quarter of the southeast quarter of section 30. The southwest quarter of northeast quarter and the south fractional half of west fractional half of the northwest quarter, the southeast quarter of the northwest quarter, the southwest quarter and the northwest quarter of the southeast quarter of section 31. The northwest quarter of the northeast quarter, the south half of the northeast quarter, the northwest quarter, the northeast quarter of the southwest quarter,

the north half of the southeast quarter and the southeast quarter of the southeast quarter of section 32. The northwest quarter of the northwest quarter, the south half of the northwest quarter and the south half of section 34. The west half of the northeast quarter and the east half of the northwest quarter of section 35; all in township 28 north of range 6 west and the pine timber only on the following lands to wit; northeast quarter of southeast quarter, and southwest quarter, southeast quarter of section 30; the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter and the north fractional half of the west fractional half of the northwest quarter of section 31, township 28 north of range 6 west.

150 And to give the said party of the second part good and sufficient title thereto when the payments hereinafter mentioned are made, hereby giving the said party of the second part permission to enter upon said premises and cut into saw logs the merchantable pine and hardwood saw timber excepting all hardwood timber on the lands above described where only the merchantable pine timber is hereby sold, growing thereon during the logging season of 1900 and 1901 and not thereafter, and all timber and saw logs remaining on said premises after May 1st 1901, shall be and remain the property of the party of the first part. And the said party of the second part hereby agrees to mark said logs for a bark mark — and for an end or stamp mark — which mark shall be recorded in the lumber inspector's office and shall be known as the property of the party of the first part.

And it is expressly agreed and understood as an essential part of this contract that until the payments herein mentioned have been made and all conditions set forth in this contract shall have been performed, the title, ownership and possession of all such timber and the saw logs which may hereafter be made therefrom, wherever the same may be, shall be and remain in the party of the first part; that the said party of the second part in consideration thereof agrees to pay for said timber the sum of $1450 as follows, to wit: February 1st, 1901 the sum of $250.00; March 1st 1901 the sum of $250.00; April 1st 1901, the sum of $250.00; May 1st, 1901, the sum of $350.00; June 1st 1901, the sum of $350.00.

This agreement signed in duplicate and shall bind the heirs, executors, administrators and assigns of the parties hereto respectively. In witness whereof said parties have hereto set their hands and seals the day and year first above written.

(Signed) CHIPPEWA LUMBER & BOOM CO.,
By WILLIAM IRVINE, *Manager.* [SEAL.]
J. H. YOUNG. [SEAL.]

In the presence of
D. S. THOMPSON AND
J. A. SIDEL,
As witnesses to the signature of William Irvine, and
D. S. THOMPSON AND
J. A. SIDEL,
As witnesses of the signature of John H. Young.

151 Q. Now I call your attention again to the letter dated May 21st 1901 which has been marked exhibit Y and which you said was an extension of the contract to May 1st 1902; I will ask you if the contract I have just read is the one which was extended by this letter of May 21st 1901?

A. Yes sir.

Q. Now which of these instruments was it that you showed Mr. Coffin Mr. Young?

A. I think it was that one and the other one also because it was directed to me at Eau Claire. I mean the letter which is marked exhibit Y and the contract you read.

Q. Mr. Young were you able to go through all of these accounts receivable that were on this statement of February 1st, during the noon hour?

A. I don't think I got through all of them quite.

Q. Well we will go as far as we can on them; I would like to have you take this exhibit L with reference to the list of accounts receivable therein contained and tell the court and jury which ones if any, of these accounts represented available assets or which ones were good on February 20th 1902 at the time you made the mortgage?

Mr. WICKHAM: I object to the question as being too indefinite to furnish any information.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

—. The first item is M. L. Boyle, amount is $960.00. That account was not collectible on February 20th 1902.

Q. What if any information did you give Mr. Lockwood relative to that particular account at the time he examined it?

A. I told him it was no good. The next item is C. H. Mears & Co.; amount is $350.00 (letter produced). On February 20, 1902, that account had all been settled with the exception of $176.10.

Q. What was the situation relative to that $176.10?

A. It was lumber that I had sold them and it was inspected by their inspector and also mine and they accepted it in the car but when the lumber got there they deducted $2.00 and refused to pay that amount. That amounted to $176.10. That claim is a disputed claim which I hold against C. H. Mears & Co. The exact amount of my claim being $176.10 and they dispute that. Mears & Co. live in Chicago. The next item on there is Miller Box & Planing Co. $110.00. That account was not collectible on February
152 20th 1902 in my judgment. I had received it before that. The next one was D. S. Flagg.

Q. Now what about the D. S. Flagg account Mr. Young, was that collectible February 20, 1902 in your judgment?

Mr. WICKHAM: I object to the question as to his judgment of it. The evidence conclusively shows his judgment is not a safe thing to act on on all occasions.

The COURT: I suppose he wants his idea of it.

To which ruling and decision the defendant duly excepted.

—. I think that account was good. I did in fact afterwards collect it, subsequent to the time the mortgage was given. It was $209.26. The next account is B. J. Kimball; amount is $203.83. That account on Feb. 20, 1902 was no good at that time. It had been paid. The next one, The National Box Co. $209.12. That was good. S. D. Mattingley $263.11. That was no good. I had collected that before. The next one is Mrs. W. S. Monroe, $27.49.

By Mr. WICKHAM: Isn't the next one Salter?

A. Oh yes $27.49. That was a mistake. Our account was balanced and then I bought a cart from her for $25.00 I really owed her $25.00. As to this Salter I am not prepared to testify. The next is S. R. L. Keizer $25.72. I have forgotten about that but I think we had an account and when I settled up with him I owed him about $50.00. I think that was the way that was. This was my account against him and he had an account against me. The next is F. J. Lavell. That was no good at that time. The amount of it was $81.46. It was no good because I had an account against him and we settled up and he paid it before that time. The next one is Ben Dietrict, $11.99. That had been paid. The next is Frank Pickett $5.19. That was no good. He was insolvent and Bert Kennedy I had an account with him. We didn't really get that settled up but we fixed it up as near as we could and I owe him $50.00. When I say I had an account with him I mean we had mutual dealings and each had something against the other, and we never got it settled up. The Kennedy account was $150.00.

Q. Now Robert Sell $92.00, what was that?

A. There was an account we afterwards settled that up and I think he owed me about $20.00 which he paid before Feb. 20, 1902. That was not good then at that time.

153 Q. The next is Si Harris?

A. That is bad, he still owes that $61.57. I think it is pretty hard to collect. The next is the village of Cadott $52.50. That was no good at that time. It had been paid. The next is L. E. Jackson $45.50. He hauled logs and had an account with him and I settled up with him. That is what I had charged against him. He hauled logs and lumber and one thing and another and I settled up with him and I owe him $98 and something. The next is Mat Dietrict. That is $2.39. He paid it. Before February 20th. The next is John Jahnkee $22.90. I didn't determine that exactly. We couldn't find his name and I couldn't swear how that was just now. The next is School District No. 7. That had been paid $11.38, prior to February 20th 1902. The next is William Shultz $12.35. That was not good. He is a farmer there and I never could get anything out of him. The next is the town of Sigel $23.12. That was paid, prior to February 1902. The next is John Sponn $19.16. That is no good. I have never been able to collect that. The next is Peter Totall. That is $83.40. I also had some dealings with him. I didn't know at the time I gave this statement what it was and afterwards settled with him and I owed him a little which I paid him, a very small amount. Godfrey Waldoski; that is $25.07 which he paid to me before the 20th of February. Sam Williams; that is

$5.74. I never was able to collect that. In my judgment that is not collectible or good. The next is Judge Wiltse estate $60.87. That has been collected. That was good; collected since the mortgage. The next is D. W. Higbee, we haven't got at that and Goodall we haven't got at that. I think that is all. I mean it is all I have looked up. At the time I made this statement exhibit L on February 1st 1902 I took these amounts off from the books. They hadn't been posted. At that time I must have been behind a month or over, quite a ways behind. The unposted items were not journalized and written out in a journal. They were in a journal yes. At the time that Mr. Lockwood came there to inspect those books I think he did have access to the journal as well as to the ledger. I think he went through them. He had access to the books. I testified this morning to a note I owed to Mrs. Sallie Moon $6000, as being the
154 amount I was indebted to her on the day I gave this mortgage February 20 1902; I do want to change that in some respect; I paid something on it; the amount was something over $600.00. I couldn't tell you just the exact amount but it was something over $600.00. I paid it in product of the mill, shingles and lath, by turning it over to the Northwestern Lumber Co. So that the balance due Mrs. Moon on February 20th would be the difference between the $6000 and $600, $5000 and something. I borrowed that money of Mrs. Moon along in the early spring sometime—along in April I think. I saw her son John Moon.

Q. What if any information did you give to Mr. Coffin, at or about the time of borrowing that money about making that loan?

A. Well one morning, I was going to Madison and he followed me up to the train and he asked me what I was going to do in regard to reducing that debt. He said that the stock holders were after him and it must be reduced. I told him that I was going to get the money of John Moon and he was away then and as quick as he came back I was to have it and as quick as I came back from Madison I told him, when I came back from Madison, I would get it and give it to him. Mr. Moon was away at that time. After I came back from Madison that week I went and got the money and paid Mr. Coffin. I think I paid Mr. Coffin part of that $6000. I think I paid him $1800 at first.

Q. And how much subsequently?

A. I think in all about very near $4000. I know it reduced the indebtedness so they were satisfied.

Q. Do you know or have any means of knowing how Mr. Coffin applied that money, on what it was applied—notes, time checks or what?

A. He generally put it on notes. He always put it on notes. I don't know what he did at this particular time because I didn't stop to see. That was in the spring of 1901. Mr. Coffin made a trip to Cadott to look over my business affairs in November or sometime in the fall of 1901.

Q. What if any conversation did you have with him at that time relative to continuing to borrow money to carry on your logging operations?

A. Well not that day I don't think anything at all. He came there to Cadott and I met him and got a rig and took him up
155 and showed him all over the woods everywhere. Mr. Clark was with him. After that time, during that fall I did have some talk with Mr. Coffin about my loans. He said that I was in debt pretty heavily and he didn't like to let any more money go and wanted me to go and see Mr. Ingram. I did at his house. I did not come to any arrangement with Mr. Ingram at that visit that night.

Q. What if any conversation did you have with Mr. Ingram at that time?

A. Well he wouldn't say if he would let me have any at that time or not. He asked me about this mill down here; my mill in Eau Claire. He wanted to know if I had bought that and how much I paid for it. He asked a great many questions I can't remember them all. Said he you paid too much, why didn't you buy my place down there, I would let you have it a good deal cheaper. I didn't talk with him any more after he felt that way. There wasn't much use. I didn't make any arrangements with him. The next time I saw Mr. Ingram was in the bank soon after that. He came into the bank when I was there. Mr. Coffin was present.

Q. What if any conversation did you have at that time?

A. Mr. Coffin said "here he is now, you can go for him because if he says you can have the money I want some witnesses to it. Mr. Ingram and I have had some trouble previous to this in regard to loans that he made you and I want some proof. I think Mr. Coffin broached the subject to Mr. Ingram. Mr. Ingram told him to let me have some more money.

Q. Did he say the amount?

A. I think he fixed $4.00 a thousand on the timber. I think that was the agreement in fact I know it was. That was soon after we came from Cadott that time. Soon after Mr. Coffin and Mr. Clark's visit in the fall of 1901.

Q. Mr. Young, did you volunteer or offer to give to Mr. Coffin or to the Eau Claire National Bank or anyone else a chattel mortgage on your property in the fall of 1901?

A. Never sir in the world I did proceed right along after that conversation to put in logs under substantially the same arrangement of issuing time checks as I had theretofore. The time checks when taken up by the bank were replaced by notes from me and Mr. Ragan. The first time that anyone suggested to me the giv-
156 ing of chattel mortgages on that property or any property I think was the day after the fire. I think the fire was on the 14th and I came to town that night and saw Mr. Coffin the next day.

Q. With whom did you have that conversation and who asked you for it?

A. Mr. Coffin. Mr. Coffin wanted me to give a chattel mortgage on that stuff; on all the stuff that I had. At that time he had chattel mortgages prepared. He did exhibit them to me. This conversation was in that little office in front of the bank. Nobody was present but Mr. Coffin. I told Mr. Coffin I wouldn't sign any chattel mortgage. I did give some reason. I told him that it would

not be fair for me to do that and leave all the rest of my creditors, that I did not have enough to pay all that I owed by giving him that.

Q. What further was said at that time by Mr. Coffin when you told him that you wouldn't have enough left to pay your other creditors?

A. He said I hadn't ought to go back on the bank, the bank had used me well and I ought to give them a mortgage. I did not give any mortgage at that time.

Q. When did you next have a conversation with any of the officers of the bank relative to giving a mortgage?

A. It was soon after that, within a week I think. I went into the bank and saw Mr. Coffin. He said that he had a new idea. He said if I would sign those mortgages he would give me the logs to saw and that would give me a chance to pay up the balance of the creditors.

Q. State as to whether or not at that conversation or the first conversation or either of them, Mr. Coffin was informed of any creditors that you had?

A. Yes, sir, I told him that I owed Mrs. Moon and I owed the Valley Lumber Co. for that plant down there and lots of other debts.

Q. Did you specify in detail any other indebtedness than Mrs. Moon and the Valley Lumber Co. as you remember it?

A. Well nothing but the logs and such things as that—the men. At that time I told Mr. Coffin the amount of my indebtedness to Mrs. Moon was $6000. I did at the time of this second conversation execute those mortgages.

Q. Did you at the time you executed these chattel mortgages know that the remaining portion of your property would be insufficient to pay to your other creditors as much as the bank was getting?

157 A. I knew it wouldn't pay them. I did know that by giving to the bank a mortgage on all my lumber, logs, lath and shingles that they would receive a larger portion of their debt than other creditors would receive out of what property I had left.

Q. Well state whether or not it was your intention to secure the bank in such a manner that they would recover out of the property you then had a larger percentage of their debt than the other creditors?

A. Yes, sir.

Mr. WICKHAM: I object as leading and move to strike out the answer.

The court denied the motion, to which ruling and decision the defendant duly excepted.

Q. Well what was your intention when you gave that mortgage to the bank covering all your lath, shingles and logs?

A. Why to give them a preference.

Q. In what manner did you propose to take care or intend to take care of your other creditors?

A. By the promise that they would give me the logs to saw at a certain price and the offal of the mill would give me a chance to pay up the rest of the creditors. I mean by that pay up my other creditors out of what I would earn in sawing the logs. After those mortgages were given I was requested by some officers of the bank to

change the form of that chattel mortgage to a bill of sale. I did subsequently execute a bill of sale. I was asked first to transfer the lumber. That is the invoice that has been shown here under date of March 3rd, 1902.

Q. State when you were first asked and under what circumstances to transfer that lumber?

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial not at issue by the pleadings.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. I was at Cadott and Mr. Coffin telephoned for me to come down that night. He did not state to me in the telephone the purpose of the meeting. I did come down. I arrived here on the 9-30 or 9-20 train in the evening. Mr. Will Cameron met me at the depot. At that time he was employed at the Eau Claire National Bank.

Q. I will ask you as to whether or not Mr. Cameron told
158 you that you were wanted at the bank?

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. Yes, sir. I did go to the Bank. I met there Mr. Coffin. There was not any one present with Mr. Coffin at that time. When I arrived at the bank Mr. Coffin telephoned immediately for Mr. Clark.

Q. Do you know or did you learn where Mr. Clark was, where he telephoned?

A. He telephoned over to Mr. John Scott's on the west side. He was there playing cards so he said. Mr. Clark did arrive at the bank shortly.

Q. State what either of them said?

A. Mr. Coffin asked me to sign a bill of sale of that lumber.

Q. Did he give any reason why he wanted a bill of sale?

A. Yes, sir.

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial.

The court overruled the objection, to which ruling and decision of the court the defendant duly excepted.

He said that the chattel mortgage was no good and the creditors could bust it. Nothing further at that time. I signed them. I signed the invoice. I think this document marked plaintiff's exhibit A is the document which I signed on that evening. I wrote it out. That is the instrument I delivered to him on that night. I think I did execute some other instrument that night. I am not positive about it.

Q. Was a note delivered to you that night by the Waters Clark Lumber Co.?

A. There was some instrument but I didn't look to see what it was. I left it on the table where I signed it. I suppose Mr. Coffin took it.

Q. Now this purports to be a bill of 575,475 feet of lumber, or inventory; I will ask you as to whether or not you took that inventory or made that scale or fixed that amount?

A. No, sir, I did not. They had a man go up there and take the inventory.

Q. What do you know about the manner in which the amount of lumber which was put in this invoice was arrived at?

A. I was with the man when he scaled it. At the time I made out this document marked exhibit A and signed what I took to be a note Mr. Clark and Mr. Coffin was present.

Q. Did Mr. Coffin or Mr. Clark in the presence of Mr. Coffin or either of them say anything at that meeting as to how this
159 amount of lumber was arrived at?

Mr. WICKHAM: I object as leading and suggestive. The witness can state the conversation.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. They said that was the amount that their man had scaled.

Mr. WICKHAM: I move to strike that out.

Q. Do you remember which one said it?

A. Mr. Coffin.

The court overruled the motion, to which ruling and decision the defendant duly excepted.

Q. After the transfer of this lumber or at the time you transferred this lumber to the Waters-Clark Lumber Co. pursuant to this document marked exhibit A were you asked *you* give a bill of sale of any logs?

Mr. WICKHAM: I object to that as leading.

The COURT: It appears to me that this is simply calling his attention to the subject. To which ruling and decision the defendant duly excepted.

A. Yes, sir. No, not at that time. Not right off after that, later on I had some conversation with Mr. Coffin relative to giving a bill of sale of the logs.

Q. What was next done with reference to the logs and the mortgage upon them?

A. Mr. Clark wanted me to give him a bill of sale. I don't know whether that conversation I had with Mr. Clark was in the bank or on the street or where it was. I think though it was in the bank. I am pretty sure it was. That was before proceedings had been taken to foreclose the chattel mortgage on the logs. After I had this conversation with Mr. Clark that I mentioned, I did have some other conversation with some officer of the bank relative to giving a bill of sale of the logs. I had such other conversation with Mr. Lockwood in the bank, in the back part, in the directors' office. It was in the evening after supper.

Q. How did you come to go to the bank to meet Mr. Lockwood, Mr. Young?

A. I was asked by him to come there in the evening. He asked me in the afternoon.

Q. Did he communicate to you at the time what he wanted to meet you for?

A. Well it was in regard to those loans yes, chattel mortgages. I did go to the bank pursuant to such request. My conversation and business I transacted with Mr. Lockwood there in the bank that night related to the loans on which the bank held a mortgage. Mr. Lockwood produced these bills of sale. They had them already made out and he wanted me to sign them. I told him that I would not do it. The reason I gave to him for refusing to sign was because
160 I wanted a contract for the agreement that they had made in regard to sawing the logs. He followed me out of the bank and he said you ought to sign them. You ought to protect the bank. I did not sign them at that time. I had my next conversation with Mr. Coffin, in the bank, in banking hours; in the front office. The conversation was relative to these loans on which the bank held a mortgage. Ragan was present at the time I had the conversation. I know how Ragan came to be there. He was telegraphed to. I don't know really for what purpose but it appeared to be for that purpose.

Q. State the conversation you had there with Mr. Coffin at that time relative to these bills of sale?

A. Mr. Coffin told me if I would sign the bills of sale that I should have the logs according to the agreement that I had made with Mr. Clark and I signed the bills of sale at that time. He went in the back room. Mr. Clark and Lockwood was in the back room and brought the bills of sale in the front rom and finally we went in the back room and Mr. Coffin gave me pen and ink and I signed the bill of sale.

Q. At that time do you know whether the Waters-Clark Lumber Co. signed, or turned over to you at least, a note?

A. Yes, I signed something there. I didn't notice in particular what it was but I signed different papers there was there.

Q. Mr. Young during the time you were talking to Mr. Coffin in the front part of the bank was anything said by you to Mr. Coffin as to why you were insisting upon having the logs to saw?

A. So that I could have the price for the sawing and the refuse to pay the debts besides what I owed them it would help me to pay them up. I had commenced long before the bill of sale for the logs had been given preparing to saw them. After I signed the bill of sale I kept right on fixing the mill. I was afterwards told that I could not have the logs to saw.

Q. I am going to go back. I think either the court misunderstood me or I misunderstood the court as to these other conversations with Mr. Clark; now before you had the conversation you have testified to with Mr. Lockwood relative to giving a bill of sale on those logs, did you have any conversation with Mr. D. S. Clark relative
161 to your sawing the logs embraced in the mortgage given to the Eau Claire National Bank?

A. Yes sir.

Q. You may state the conversation that you had with Mr. Clark at that time?

Defendant's counsel object.

The court overruled the objection, to which ruling and decision the defendants duly excepted.

The COURT: I think he may testify on that special line now as to any agreement to saw the logs.

A. I saw Mr. Clark and he told he that if I would give the bill of sale of the logs that he would guarantee that I should have the logs to saw and he would give me the going price for sawing them and give me the refuse so I would have enough to pay up the balance of the debts and that was the only way I could get the other debts paid up.

Q. At the time Mr. Clark had this conversation with you did you consent to give the bill of sale?

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial and calling for a conclusion.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. No sir.

Q. What if any contract or what if any demand did you make upon Mr. Clark as to the condition under which you would give a bill of sale?

A. I wanted him to make a contract to that effect.

Plaintiff's counsel stated: "I find that I offered in evidence a diagram of certain lands, which has been received as Exhibit X. I was mistaken. I supposed I had the right one in my hand. It is a diagram of certain other lands that I wish to offer, and we ask the privilege of withdrawing that exhibit.

Defendant's counsel objected to its being withdrawn.

PLAINTIFF'S COUNSEL: We offered it inadvertently and it does not relate to the lands described in this case. I put it in yesterday among some other papers in another case and I got hold of the wrong one.

Defendant's counsel stated: I have no objection to their offering any explanation or correction, but we want that one in the case."

I had never compared this diagram with the descriptions in the contract at the time I testified to it. I was instructed or asked at some time by Mr. Coffin to have a conference with Mr. Clark on the subject. At that time Mr. Coffin told me to telephone up to Mr. Clark at Duluth. I did do so. The conversation I had over the telephone with Mr. Clark was I asked Mr. Clark when he would come down, that Mr. Coffin wanted him to come down and get that matter straightened up. The matter referred to was the bill of sale of the logs. Mr. Clark said he would be here as quick as he could, he had some important business to attend to and as soon as he got through he came down. The next time I saw Mr. Clark after he came to Eau Claire I did have a conversation with him. That was the conversation as to which I have heretofore testified.

Q. What was that conversation Mr. Young, you testified to part of it but I believe you did not state all of it, that you had with Mr. Clark relative to giving the bill of sale?

162 A. Mr. Clark wanted me to give a bill of sale to the Waters Clark Lumber Co. He said the creditors could bust the chattel mortgages.

Q. Go on and state the conversation, all of it from beginning to end as you remember it that you had with Mr. Clark at that time?

A. He said if I would give him a bill of sale he would give me the going price for sawing the logs and the offal of the mill and that would give me a chance to pay my debts, the outside debts and that was the only way I could pay them up. I told him if he would give me a contract I would. He said he wouldn't give me any contract; his word was good for it and he would guarantee I should have the logs. He said that I ought to stick to the bank, that they had used me well and I had ought to do that for them. Afterwards I did not saw these logs that were embraced in the bill of sale. After the bill of sale of the logs was given I did have some further talk with Mr. Clark relative to sawing these logs. I had several talks with him. I was advised by Mr. Clark afterwards that I would not be permitted to saw the logs. That was along in May sometime, I think about the middle of May. I am not positive of that.

Q. One of these items on exhibit L being a statement you gave Mr. Coffin on February 1st, 1902 is as follows: 2 teams and harness $150.00; please explain to the jury the interest you had in that property on February 20th 1902?

A. That was a team I had bought from a fellow by the name of—well I have forgotten his name. I can get it though. I was to pay him. I have forgotten the price I was to pay him but I had him drive the team in the winter and intended to buy the team at the end of the logging season. He took that team and I paid him by the month for the team. On February 20th 1902 I had not paid any portion of the purchase price of that team. I suppose the fair value at that time of the other team I had owned was about $100.00. I think four pairs of sleighs were on hand at the time the trustee took charge of my property in bankruptcy; three or four wagons I am not sure which. I think two carts; I couldn't say I am sure how many pairs of trucks.

Q. There were three pairs on February 1st it seems?

163 A. I think one pair was burned up. I think there were only two. I am not positive about that though; two stoves. The trustee has them and the loading chains some of and the chains for sleighs, the blacksmith outfit, the logging rutter. The hay had been used.

Q. I will ask you if you have at my request tried to dispose of any of that for the benefit of the trustee?

A. I have disposed of some yes. I haven't sold any sleighs. I have not had any opportunity to sell them for any price I sold some blankets. I dont' remember how much I received for those. I gave it to you whatever it was. I sold a little wood that was there. I got sixty odd dollars for that. I did sell that wood and blankets

for the best price obtainable. In my judgment the whole logging outfit of logging equipment left there and now in the hands of the trustee consisting of sleighs, wagons, carts, tools, blankets, trucks, blacksmith outfit and logging rudder would be worth about half. I don't know whether you could get that much. You might and you might not.

Q. Just put a price on it?

A. About half value.

Q. How much is the value, put a price on the aggregate amount of what the outfit is worth at the present in your judgment, what it would sell for at a fair value?

A. I couldn't say, four or five hundred dollars I suppose maybe not as much as that.

Q. What is the value of the property you purchased of the Valley Lumber Co. in your judgment as it stands to day; what is it worth, the fair value of it as it stands to-day?

A. I don't know Mr. Bundy. In my judgment I don't think it is worth as much as I paid for it. It is not worth as much as the incumbrance against it and the interest on it. In my petition in bankruptcy I claimed as exempt a team, one span of horses, my household furniture, my homestead and one wagon.

Mr. WICKHAM: And one cart.

Q. Do you claim as exempt any cart?

A. I think not no sir. If I did it was a mistake. I didn't think I had a right to the cart.

C. T. BUNDY, called for the plaintiff being duly sworn testified as follows.

Examined by Mr. WILCOX:

I live in Eau Claire. My business is that of a lawyer. I
164 am one of the attorneys for the plaintiff in this case. I did commence this action on the part of the plaintiff as his attorney. I don't remember about what time I commenced this action. The original complaint seems to have been served July 7th 1902. I think a summons was not served prior to that time, I think that is the time it was commenced. I do know one W. K. Coffin the cashier of this defendant bank. I did prior to the commencement of this action have a conversation with Mr. Coffin. The conversation was in substance, I cannot give the words, but it was a demand upon Mr. Coffin or the Eau Claire National Bank, to pay to the trustee the value of the property which had been transferred to it by Mr. Young within four months prior to the time Mr. Young filed his petition in bankruptcy. The result of that demand was Mr. Coffin said he didn't know and referred me to his attorney, Mr. Wickham. I did have a conversation with Mr. Wickham about it. I don't think that conversation was much of anything. Mr. Coffin referred me to Mr. Wickham and he said he would see Mr. Wickham and I guess I asked Mr. Wickham if he had seen Mr. Coffin. I didn't make any demand upon Mr. Wickham.

Q. What was the result of your conversation with Mr. Coffin and

Mr. Wickham as to whether or not they complied with the demand?

A. They did not. Thereafter I commenced the action. As attorney for the trustee, the plaintiff in this action I have had charge of the reducing to possession of the property that came into his hands as such trustee.

Q. You may state to the court and jury what property came into his hands and you have reduced to possession. if any?

A. Well I told Mr. Young to try and find a purchaser for the things and he found a man that wanted to buy some blankets and I think some chains and we sold some blankets and I think we received $18.00. That is my recollection. We afterwards found a man who would take some wood that wasn't burned that was at the mill and my recollection is we sold $60.00 worth. That is all I have realized on behalf of the trustee on that property that came into his possession. I was present at a meeting of the creditors of
165 the bankrupt at which the matter of bringing this action was considered. Such action was not made a part of the referee's minutes of the meeting, nor was there any written resolution offered. There was a vote.

Q. What was the action that was taken by the creditors at that time with reference to bringing the action?

Mr. WICKHAM: I object as incompetent, irrelevant and immaterial.

The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. By vote they instructed the trustee to employ counsel and commence an action in behalf of the trustee against the Eau Claire National Bank to recover the value of the property transferred to it within four months prior to the adjudication in bankruptcy of Mr. Young. I was employed by the trustee for that purpose.

Q. You may state what if any funds the trustee has in his possession if you know, or did have at the date of the bringing of this action, other than the $18.00 for blankets and the $60.00 for wood that he had received?

A. I don't think he had received that when the action was commenced. He didn't have any money in his hands at that time. The trustee has no property in his possession as such, other than what is left of the logging outfit, the accounts receivable and I suppose the equity that there is in the Valley Co. purchase and one horse that is still on hand. 40 acres of land didn't go to the trustee. That was sold before the trustee was appointed.

Cross-examination.

Examined by Mr. WICKHAM:

I don't know what became of the 40 acres of land. I understand it was sold. It was not listed and I understood it was sold. I know nothing about it. It was prior to the adjudication as I understand it that it was sold. I have not ascertained to whom it was sold. I do not know anything about the matter of its being sold or to whom it was sold. I never heard of it until I saw it on that list.

It was not listed as an asset of the bankrupt in the bankruptcy court, so my attention was not called to it. I think that wood was not listed as an asset. I never saw that wood. The trustee Mr.
166 Jackman never saw it. There was a man came here for him and saw it. There was a receiver appointed first and the receiver sent an attorney. Mr. Jackman wasn't receiver, Mr. Tenney. He appointed Hall as the receiver's attorney. I don't know a thing of my own knowledge about the wood. All I know I received $60.00 for the wood. John Osterman gave me the money. Mr. Young negotiated the sale. The wood was sold to John Osterman. That sale was carried on by Mr. Young, the deal was made by him. The negotiations which led up to the sale were with Mr. Young. I think I wrote a direct offer to sell it at that price. I have forgotten how many cords of wood were sold if I ever knew. I think it was all sold. I don't know as I ever knew that. I think it was all sold, what was left. I don't know anything about the contract or an extension of the contract that was made between Young and the Chippewa Lumber & Boom Co. except as indicated by the written document that has gone in evidence here today. I have not heard anything about it. I have not made any investigation of that subject. I do not know if Mr. Young had some negotiations about that. I don't know who obtained the benefit of that stumpage contract. I don't know that anyone did. I have no information and never heard.

Q. Now with regard to the conversation that you had with Mr. Coffin before this action was commenced, was not the transaction that you went to Mr. Coffin about, the one you came to me about, a proposition to the effect that these logs were to be purchased back from the Dells Lumber & Shingle Co. and then sold to a purchaser that you had some negotiations with and the proceeds go into the hands of the trustee?

A. Well yes I should think so partially. That was not the proposition I made in behalf of the trustee. My proposition was to this effect: we would commence an action, start an action to recover the value of that property unless before it was run over the dam and turned in to the mill pond at the Dells Lumber Co. you folks would buy that timber and turn it over to the trustee. If you would do that so we could recover the property we wouldn't sue for the value; if you wouldn't we would. I did say to you as I recollect
167 it that I had a talk with Mr. Coffin and I made a proposition and that he referred me to you.

Q. And then did you not state to me that the proposition that you made to Mr. Coffin was that the property should be purchased back from the Dells Lumber & Shingle Co. and sold to some person that you had in mind who would buy it and the proceeds of the property to be delivered to the trustee?

A. Well I think that was the substance of the proposition that I made. I told Mr. Coffin that I didn't want a law suit and if he would let us get those logs back and resell them so the proceeds would go to the trustee then there would be no occasion for a law suit. The proposition was made to avoid a law suit and if they wouldn't do

that we would be obliged to sue for the value. That was my statement to Mr. Coffin and he referred me to you as to whether or not he would accept the proposition and save a law suit.

Q. Do you know whether or not a large portion of the logs had been turned over to the Dells Lumber & Shingle Co. and a considerable portion had been sawed at that time?

A. I remember you told me that fact and I think we made some further inquiry. Mr. Young thought that wasn't true and others said it was. I don't know whether it was true or not.

Q. Aside from that proposition which could not be accepted if anyone wanted to, did you made any demand upon anybody before commencing this suit?

A. Yes I did. That proposition was not a demand. The proposition was only to avoid a law suit.

Q. If there was anything else said aside from that, that is what I would like to know; I will ask you first did you say anything to me aside from making that proposition?

A. No I think not. I don't think I had any talk—I certainly didn't make any demand of you. I don't think I talked with you anything except the advisability of accepting my proposition. I don't remember if I said anything to you to the effect that I had had any conversation with Mr. Coffin except to submit to him that proposition. I don't know if I told you that I made a demand of Mr. Coffin or not. He referred me to you relative to the proposition.

Q. Is it not a fact that the question of any necessity for a demand first arose on the argument of the demurrer which you and I had in this court room; isn't that the first time that was suggested?

168 A. That was the first time that was argued in this court. It is not the first time anything was said about the matter of demand.

Q. What was it you said to Mr. Coffin aside from the making of the proposition?

A. I won't state the words used but I know very clearly what I said to him. I went there to his room and sat down and said to him that I was attorney for the trustee; I told him the substance of Mr. Young's claim as it was disclosed at the creditors' meeting. I told him that under our view of it we were either entitled to that property or the value of the property that had been transferred and I told him it would be necessary and stated in terms to him, that it would be necessary in order to prevent starting a law suit for its value, to get back the specific property, that we had rather not have a law suit and if he would get the property back from the Dells Lumber & Shingle Co. and have it resold and the proceeds turned into the trustee and divided up among all of the creditors that there would be no necessity of having a law suit and he said he didn't know about that proposition. He didn't say that he wouldn't take it or that he would take it but he said that he would refer me to you, Mr. Wickham. He didn't discuss the proposition at all. It was a question of law he said he didn't know anything about their rights but you were their attorney. I should talk to you. I said to him in terms, unless we could make an arrangement we

would have to commence an action for the value and he must consider this a demand if we didn't make such compromise. I said that in express terms. I made this proposition by way of compromise to save a law suit. The demand I made was a demand for the value of the property that had been transferred by Mr. Young to the bank within four months before the adjudication in bankruptcy.

Q. I would like to know which you mean; did you say the value of the property; once you said the money and the other time you said the value of the property?

A. I meant the value of the property that had been turned over by Mr. Young to the Eau Claire National Bank within four months prior to the adjudication. I told Mr. Coffin that under the law as I understood it we were either entitled to the property or the value of it. If we could get back the property that ended it. If we
169 didn't we wanted the value.

Q. You spoke about some resolution passed at a meeting of the creditors; was that resolution to recover from the bank the value of the property conveyed to the bank or the value of the property conveyed to the Waters-Clark Lumber Co. by bill of sale and chattel mortgages which have been offered in evidence.

A. I don't remember by hearing that read. You are probably reading it correctly if you have it before you.

Q. Well the only reason I asked is you said the property conveyed to the bank; were you employed as attorney for Mr. Young to put him into bankruptcy?

A. No I was not employed by Mr. Young although I put him in bankruptcy. That is I made out the papers. I did sign my name to the papers as his attorney. He did not give me a note of $500 for doing that work; he didn't give me anything. He did not give me a note of $500 for doing that work which I filed against his estate. He did give a note of $500 to the firm of which I am a member, which I filed against his estate. Mr. Frawley did the work for which the note was given. My recollection is that the note was given a month or so before the adjudication in bankruptcy although I am not certain. The consideration for the note was services rendered. I don't know in what matter the services were rendered. Mr. Young and Mr. Frawley had a great many conferences together and had business together that I knew nothing about. It had absoutely nothing to do with this bankruptcy proceeding. Every dollar's worth of work that has been performed in this bankruptcy proceeding has been charged to another man entirely.

Q. I suppose of course the services you have rendered in this case since the appointment of the trustee would not be charged to Mr. Young?

A. No, nor before that, they were not charged to him.

Q. As I understand your testimony about that note Mr. Bundy you think it was given in the month of May 1901 on account of legal services Mr. Frawley rendered for Mr. Young, the nature of which you don't know?

A. I know the nature of the services. It was consultation and advice given Mr. Young on a great many different matters. What those

matters were I don't know. I know they had a great many conferences together. I don't know of any law suit we ever had
170 for him. It must have been principally counsel and advice. I really don't know. My firm never had a law suit for Mr. Young to my knowledge.

Mr. BUNDY: In my evidence yesterday I testified that I received for the trustee in this case $60.00 for wood still at the mill. I find on looking up at the office that I am in error about that. It is $120.00 that I received in behalf of the trustee.

JOHN H. YOUNG recalled for plaintiff testified as follows:

Examined by Mr. BUNDY:

I think I did last night complete my examination of these accounts receivable so that I am able now to tell what were collectible on February 20th.

Q. There is D. S. Flagg, I don't know but you testified to that before, but you may testify as to whether or not that was a collectible account on February 20th.

A. He is good, yes sir.

Q. And I think there is another Mr. Salter that you passed on yesterday.

A. That was also good. The amount of that was $380.45. That was collected subsequent to February 1st. D. W. Higbee that is $284.12; he is good. D. M. Goodman & Co. $195.95; that is also good. J. W. Burnett $295.17, he is also good.

Q. Now go on Mr. Young and tell us about the accounts which you have not mentioned heretofore. What about Hadley?

A. That was what was on the books and he had worked for me and I settled up with him and paid him. That is Ed Hadley, Jr. The amount was $3.07. That is the account on exhibit L. Mr. Hadley didn't owe me anything on February 20th. The next one Peter Burke; he is good. The amount is $19.60. I have never been able to collect it but I think it can be collected. He is a good responsible farmer. The next is William Cassody; there is an account against him of $26.37. He also done work for me during the winter and I settled up with him the same as the others before that date February 20th. There was nothing due me from him on February 20th. Charles Feltz $35.23. I never have been able to collect it. I don't think it can be collected. S. W. Faulkner, I had a charge against him of $15.93. He also done some work for me and I settled up with him just the same, prior to February 20th. Harley Faulkner $34.03; that is no good. He is not responsible. H. C. Hurl-
171 but $12.76. That I don't think can ever be collected. I never knew anybody to collect anything out of him. Then there is William Jenson $34.92. I had an account against him on my books and he had an account to offset that when I settled up with him. There was nothing due me from him on February 20th. O. Lynn $4.50. That was collected before February 20th. James Lewis $12.90. I have never been able to collect that. Alex Larson $5.60. I have never been able to collect that. I know those last two gentlemen. I don't know whether they are collectible or not. I

couldn't say. I have never been able to get anything anyway. Barney Martin; that is $6.28. I was never able to collect that still I think he would pay if he was forced to. John McGivern $26.11. I had an account against him for something that he bought. He also worked for me and I paid him the difference, paid him more than that was; I owe him besides. There was nothing due from him on February 20th. Gilbert Markelson $2.94. I think that is good. Still I never have been able to collect it. Then there is Albert Miller. I wouldn't say whether he is good or not. I think that is the one I couldn't find. That is $14.00. There is Charles Marriner $18.75. I have never been able to collect that; then there is John Oakland $14.50. He worked for me and I settled up with him. I didn't owe him anything at that time. Then there is William Richardson $17.67. I had a charge against him on my books. I settled up with him and I think there was a little coming to me which I got before February 20th. There is William Raymond $13.98. He also worked for me in the same way and William Tiffany $31.93. I had an account against him and I wouldn't say as to what he owed. I think it is just about square. I am not sure about that.

Q. What about Peter Tutener. I think we passed him?

A. I had that charged to him and he had an account with me and so we settled up and I owed him some and paid him the difference. I have computed or figured up the total amount of the accounts receivable that were collectible and debts owing to me on Feb. 20, 1902.

172 The amount was $1,635.04. Now in addition to the debts which I testified before, there was some in addition to the time checks which were outstanding and held by the Eau Claire National Bank on Feb. 20th 1902; other time checks were held by the bank at Cadott. I didn't know the amount of such time checks at that time. I knew there was time checks out but I couldn't tell. I have those time checks. I paid them directly. I paid those time checks with the moneys I collected generally speaking from these accounts receivable about which I have testified. The date on which I paid them I think was March 12th. I have not computed the total amount of these time checks. In addition to the other indebtedness which I have testified about the sum total of these time checks was held by the Bank at Cadott. On February 20th 1902 I did not have any money of any amount. I presume I did have as much as $50.00 I might have had as much as $100.00 but I don't know. I couldn't tell you that. I didn't have very much I can tell you that. I might have had $100 and I might not. I have those time checks with me that I paid on March 12th. I have looked over this bundle of time checks before. I know these are the time checks paid by me on the date that they are stamped "paid" by the Bank at Cadott. These time checks were outstanding on Feb. 20, 1902 and had been for a year pretty near.

Mr. BUNDY: I will offer the whole bunch of these time checks in evidence and then he can add them later.

Q. Mr. Young at the time that you said you paid Mr. Coffin certain moneys out of the money you were paid by Mrs. Moon do you

know whether or not the money that you paid was all applied on one note or otherwise?

A. Two notes I think. The amount that I paid the first time was $2000 I think.

Q. I think you said it was your recollection it was $1800; do you change that?

A. I change that yes sir.

Q. What do you know about some three car loads of lumber that was shipped from Cadott or two cars to Mears & Co. and one to E. M. Fish & Co.

A. I don't know anything about the Mears lumber. I don't know when they shipped it. I did not ship it. I don't know what lumber it was that was referred to by Mr. Clark in his evidence unless it was lumber that I sold to them before 1st of February, long before
173 the 1st of February; sold to Mears & Co. They shipped it; they must have. I didn't have anything to do with the shipping of it. The car load of lumber shipped to E. M. Fish & Co. consisted of a lot of odds and ends of lumber. Some of it was taken after we tore that old mill down. I took the best of it and then we had a lot of odds and ends lying at the depot that had been culled out of lumber that we had been shipping and I put that in and there were some shingles and lath that I put in that I picked up on the road that teamsters had left along on the road and made out a car load and sent it to Mr. Fish, or had my foreman do it.

Q. Do you know whether or not Mr. Young that lumber which was shipped to Mr. Fish & Co. was a part of the lumber which was scaled by the gentleman sent up there?

A. Now sir not a bit of it, not the first bit of it. I did sell to Knapp, Stout & Co. some shingles at one time that I had at Cadott. I think there were two cars. That would approximate over 300,000. They were large cars. I think there is 150,000 in a car. I sold those shingles for 75 cents a thousand; they were cull. At the time these mortgages were executed on Feb. 20, 1902, embracing as stated in the mortgage about 600,000 shingles and about 200,000 lath, I couldn't tell whether or not that amount of shingles were there. I never counted them. I just estimated them.

Q. I mean at the time the chattel mortgage was given?

A. No sir. At the time I executed those mortgages I did not give them any statement as to the amount of stuff that was there to put into them. The mortgages were prepared before I got there.

Mr. BUNDY: Mr. Coffin have you with you the statement we asked for yesterday as to the loans and discounts of 1901?

Mr. COFFIN: Yes sir.

Mr. BUNDY: May I see it please.

Mr. COFFIN: Yes sir. (Statement produced.)

Q. What was your custom in your business transactions with the Eau Claire National Bank, Mr. Young, as to their delivering to you time checks that you took up by way of note?

A. Sometimes they did and sometimes they didn't.

Q. What do you mean by that?

A. When I paid the note?
Q. Yes, then they would deliver to you what?
A. Time checks for that amount. Then they would de-
174 liver up time checks for which the note was given.

Mr. BUNDY: I think we are entitled to the books or to a certified or sworn transcript from them under the section of the statutes under which the demand was made. This is neither.
Mr. WICKHAM: Mr. Coffin can swear to it.
Mr. BUNDY: Then I will take Mr. Young off and have Mr. Coffin swear to it. That will do in place of the certificate.
W. K. COFFIN recalled for plaintiff testified as follows:

Examined by Mr. BUNDY:

Mr. BUNDY: We call Mr. Coffin under the statute, section 4068.
Paper marked for identification exhibit A-1.
Plaintiff exhibit A is a memorandum that I made yesterday noon and last evening. I didn't have time to put it in any better shape than that before I came over this morning. It purports to show all of the paper we had of Mr. Young from the time of that first loan of $2000 in December 1899 down to the spring of 1902. It does purport to show all of the payments that have been made on account of that paper except on the notes I have here. They show on the notes. The notes that have been offered in evidence. I didn't put down the payments because the notes show for themselves but any notes that have been paid the payments are indicated there.

Q. You testified on yesterday Mr. Coffin that Mr. Young never made any payment to you of $2000 or any sum like that except what appear on the notes that you held in your hand and which have been offered in evidence during the year 1901?
—. ——.
Q. Well what is your recollection now Mr. Coffin?
A. My knowledge is that there were payments made. I didn't remember it at the time nor I don't remember it now except that I find it. Still I do recollect of payments. There was one payment in the spring of $2000. There is apparently one of $1000 that is indorsed in two or three different places but I think it was all made at the same time. I don't know whether the $1000 was money or what it was but I think probably it was money.

Exhibit A-1 offered and received in evidence and reads as follows.

	1899.						
39826-Y Con-	12/13-	12/14-	D	2000.	6/2/00-	148.96	
					6/16/00	148.96	
					7/16/00	300.	
					8/7/00	200.87	
					8/11/00	123.48	
175					8/17/00	500.	
					9/15/00	577.73 & I.	94.46
40916-Y—	4/2/00-	4-2/	D	8000.	11/15		
	00					'00	
41721-C.H.M. & C.-Y-	6/29-	7/2-	8/28	2035.29-	26.22		
2 Y- R	7/2	"	D	2861.95		9/15 Pd.	14.30
						9/18 "	475.
						9/25 "	206.05
						10/4 "	725.
						10/9 "	197.96
					10/19	"	563.23
						10/20 "	250.
						10/25 "	303.50
						11/8 "	126.91
						" "	38.94 I.
						11/15 "	22.26 I.
	'00	'00					
42454-R-H-	9/15-	9/18-	D-	2576.60		4/26/01-Pd.	2000.
						4/29/01 "	576.60
						" " Int.	126.68
	'00	'00					
42639-Y-R-	10/15-	10/15-	D	4902.98			
43430-Y-R-	1/1/01-	1/2/01-	D	4350.96			
44933-Y-R-	4/15/01-	4/15/01-	D	6593.31			
45051-Y-R-	7/15/01-	7/15/01-	D	5236.07			

Q. Mr. Coffin during your business relations with Mr. Young in 1901 was it not customary whenever he paid by way of draft on his customers to endorse on the note not only the payment but the name of the person on whom the draft was drawn?

A. No sir it was not. I don't remember that he ever gave a draft on a customer. I did not usually itemize on the note the names of the person giving the check when he paid in that way. I don't remember ever doing it.

Q. I want to ask you about the system of discounting these time checks; I don't know but you did testify to it but to make it clear I will ask you; the bank I understand it took these time checks as they were presented and discounted them the usual banking discount?

A. Yes sir. Then when those were taken up by Mr. Young or Mr. Ragan's note they paid for them at the face value so that the bank in all these transactions got our regular interest on the time checks we handled. That is what I mean by discount.

Q. Then when you took the notes you got interest on the note in the ordinary course of business?

A. If the note was paid we got interest on it.

Examined by Mr. WICKHAM:

That would be interest from the time the note was given until paid.

175½ Q. And the discount of the time checks would be the discount from the time you bought the time checks until the time checks became due when the note was given?

A. That is not quite right. We didn't buy the time checks, we discounted them for Mr. Ragan on his indorsement.

Q. Mr. Coffin, you testified that this paper which is A-1 showed a list of the paper held at a certain time by your bank against Mr. Young. It does not include any statement of the time checks does it?

A. No sir.

Mr. BUNDY: Mr. Wilcox and Mr. Lockwood together have prepared an itemized list of these time checks referred to in the evidence of Mr. Young and which he paid at the bank at Cadott on March 12th showing the amount of each but not the name. The aggregate amount is $1,672.05. I understand we stipulate that is the aggregate amount of the time checks which Mr. Young testifies he paid at the bank at Cadott on March 12th and that the statement marked exhibit B-1 correctly shows the amount of each.

Mr. WICKHAM: We admit that the time checks which Mr. Young produced and testifies that he paid are in the amounts that appear on that sheet and that they foot up $1672.05 as shown by exhibit B-1.

Exhibit B-1 offered and received in evidence and reads as follows:

25.	14.36	
10.	45.	
23.66	20.	
56.	25.50	
32.60	25.67	
79.50	35.46	
15.	12.75	
12.91	28.87	
17.93	63.77	
10.	12.98	
15.	6.87	78
5.25	58.40	101
10.	4.	104
39.15	4.	68
60.	28.22	7
100.	50.12	
20.	28.76	
4.	113.33	
15.	54.93	
17.63	26.99	
20.	50.	
7.	74.20	
10.		88787
5.81		78418
		1.672,05
176		
4.50		
37 20.		
78 15.		
127 15.		

78 15.	
8 99.86	
20.	
18.75	
83.32	
887.87	784.18

JOHN H. YOUNG recalled for cross examination, testified as follows:

Examined by Mr. WICKHAM:

Those time checks that I say I paid at the Bank at Cadott, were paid by me personally. They were paid in cash.

Q. Were they paid in logs?

A. There was 22,860 feet was paid in logs sir. Logs are cash in one sense of the word. They answer for cash. When you asked me if they were paid in cash I did not understand at that time that that meant logs. The amount paid in logs was 22,860 feet. I got those logs in the woods. Some of them were a part of the logs I logged that winter. They had been hauled from the mill out there. They were some hardwood logs. They had not been delivered at the bank. They had been hauled into Cadott and piled up at the mill yard there. They had not first been delivered on the bank to be driven and afterwards been taken from the bank and hauled to Mr. Monroe's mill. Those were a part of the logs that had been put in and cut that winter, that many thousand feet of them. Those logs were hauled to Cadott just about the time of the fire. It was in the wind up. They were not included in the chattel mortgage then that I gave to the bank. They were not included in the chattel mortgage because they were sold before the chattel mortgage was given. I didn't say they were sold on the 12th of March, that that is the time I paid it. That was the time I paid these time checks on the 12th of March. The checks are stamped on the 12th of March.

Q. And they were paid partially at least in those logs?

A. I don't know what you mean exactly. I sold the logs before that and he had the time checks in his possession at that time. He had not paid in cash for the logs.

177 Q. The logs went to pay for those time checks did they not?

A. If you want it that way you can have it so. The village of Cadott is in the town of Sidell, I believe I think it is. I may be mistaken about that but that is my impression. I lived there awhile yes.

Q. You knew when you gave a chattel mortgage that you mortgaged those certain pine and other logs owned by said Young if any on the Yellow River, Chippewa County, Wisconsin, being about 1,800,000 feet together with all other logs cut by said Young in the town of Sigel in said Chippewa County and yet to be hauled and banked on said river; said logs yet to be hauled and banked; being about 300,000 feet. Didn't you testify yesterday that all the logs you had at that time were included in that mortgage?

A. At the time of the chattel mortgage yes.

Q. And you knew that when you sold these logs to Mr. Monroe that you were selling chattel mortgage property didn't you?

A. No sir they were not mortgaged when I sold them.

Q. You said the mortgage included all the logs you had?

A. Well I didn't have them then. I think they were applied in payment of those time checks on March 12th. I make out they were not in the mortgage because they wasn't mortgaged at the time I gave the mortgage; they were sold.

Q. You gave the mortgage in February did you not?

A. February 25th I sold them. I sold them previous to that. They were not in the mortgage. I sold them previous to that.

Q. I understood you to say they were applied in payment of the time checks on the 12th of March?

A. That may be your theory.

Q. Isn't that your testimony?

A. What did I testify to. What do you want to know. I told you that I had sold the logs. I paid all that amount in cash but these logs.

Q. Did you pay any of it in anything but logs?

A. I paid for it in money.

Q. I mean anything but logs and cash?

A. No sir. My team hauled some of those logs and teams that were working for me, and farmers. When they were hauled they were piled at the mill yeard at Peter Dietzler's. It is a yard where we got permission to put the logs. They were sawed up by Mr. Monroe. I supposed he got them sawed into lumber.

Q. Was it the mill yard of the mill where they were sawed?

A. I don't know that it was really that mill yard. It was
178 the north side of the mill. I know that he had logs there himself.

Q. He had a mill yard of his own had he not?

A. Not altogether. It was a very small one and he put logs in this yard when he got his yard filled up. Mr. Monroe has not a mill. Those logs were sawed at Peter Dritzler's mill right there in Cadott. I told you there was a small mill yard connected with that mill. There was a mill yard connected with the mill. These logs when I hauled them to Cadott were not put in his mill yard. They were afterwards taken from the place where I hauled them and brought to the mill yard. I couldn't tell you when they were taken from the place where I hauled them and brought to the mill yard. I think it must have been after March 12th. I wasn't there when they were taken away and of course I don't know. I did say in my direct evidence yesterday morning that I borrowed $2000 of the Eau Claire National Bank after going to Cadott. I went to Cadott to do business first the year before that, four years ago this last winter, about the 1st of January. About the 1st of January 1899. That must have been it. You can figure back and see. I had been to Cadott when I borrowed the money a year before that. I borrowed the money somewhere in the fall, in November I think it was. I am not sure about the date; I couldn't tell you.

Q. Do you remember if it was about the 13th of December 1899?

A. May I refer to something and look. December 13th 1899, yes sir. I borrowed $2000 at that time. Afterwards I paid that note.

Q. I want to ask you another question about these time checks you paid at the Bank at Cadott before I pass it; that is a bank that is owned or run by Mr. Monroe isn't it?

A. Yes sir. Those time checks are all time checks that were issued in the spring of 1901. Some of them were a year old at the time I paid them? There are some that are not a year old I think.

Q. They were all substantially a year old were they not?

A. Well I couldn't say that because they weren't all a year old. Some of them was issued later.

Q. Are there any of those time checks that were issued for work done in the winter of 1901 and '02?

A. I could tell by looking at them. I don't know. I could*ny* say Mr. Wickham. I think most of them were all issued in
179 the spring of 1901 for work done the previous winter.

Q. Wer-n't they all?

A. Well I can't tell unless I look at them. I can't retain all this in my memory.

Q. Do you remember that none of them were for work done in the winter preceding the time when you paid them in March 1902?

A. They were issued that winter, they were dated mostly April the 15th. They were issued previous to that. That would be 1901. They were due April 15th 1901. I paid them in March 1902. There are some of them I think issued later than that. I couldn't tell how much later. The date is on them.

Q. You know that none of them were issued the next winter?

A. No, the next summer. There were some of them issued in the summer of 1901. I think those in August 1901 are the latest. There may have been some in October. I don't know about that. I don't know if some of them were issued in the spring of 1900. I don't think it.

Mr. WICKHAM: None of the checks were issued later than Aug. 1901.

Mr. BUNDY: Apparently.

When I borrowed that $2000 from the Eau Claire National Bank on December 13th 1899, I think I did have a conversation with Mr. Coffin about my financial condition. I don't know just what it was. I think at that time he did ask me what property I owned. I am not sure if he asked me what debts I owed. It has been so long I have forgotten I presume he did though. I wouldn't swear positively but I think he did because he was always very anxious about asking questions, always was. He always appeared to be quite careful to get at the exact facts about matters relating to my financial condition. He always asked questions and I answered them as best I could. I certainly did answer him as truthfully as I could. I have been in business a good many years.

Q. And you have had considerable experience in the borrowing of money?

A. Well the most is with him, in fact about all. I have borrowed money in some of the other places.

Q. You understood did you not that he was asking questions relative to getting at the truth as to your financial condition and ability to pay?

A. He was getting at it I suppose as near as he could. I was telling him the trust as near as I could. When I first borrowed money at the bank I think he did make inquiries at that time. I guess
180 he did ask me about my mill at that time, yes. At that time I had the shingle mill at Cadott. I suppose the mill was worth about $2500 or more at that time. I don't know as it was worth any more. The other property I had at that time was this stumpage out there in the woods. Nothing else. I had my house here in town. That is all I can remember of. I don't know of anything else I had. I did not have a mill at Paint Creek at that time. I couldn't say if I had any shingles at that time. I didn't have any lath then. I couldn't say if I was in debt at that time. I have forgotten.

Q. Well perhaps I can refresh your recollection a little?

A. All right, sir. I don't remember if I did on December 6, 1899, a few days before I borrowed that $2000 make and sign a statement, as the basis of my credit. I might have done so.

Q. Look at that paper and see if that is your signature?

A. That is my signature, yes sir. I had forgotten about that.

(Paper marked for identification defendant's exhibit No. 1.)

That paper that I say was signed by me, I notice is marked defendant's exhibit 1. I don't think my mill at Cadott at that time was free and clear of all incumbrances. I think it was incumbered some, not much. I had been doing business for the Northwestern Lumber Co. It might have been worth $4000. I am not positive I didn't have any mill at Paint Creek at that time. I have forgotten when I bought the Paint Creek mill. My mill at Cadott might have been clear of all incumbrances and worth $4000 at that time.

Q. Well don't you know, now refreshing your recollection that that was the fact?

A. Well I don't know. I might have thought so. I suppose I did attempt to truthfully and honestly state what the facts were at the time I signed this statement. I see by the statement that I did state that at that time my mill at Cadott was clear and worth $4000. I think that was the fact. I wouldn't deny that.

Q. Refreshing your recollection further you know now do you not that you did at that time have a mill at Paint Creek and 40 acres of land that was clear of incumbrance except $200 and that you carried $1000 of insurance on it and that it was worth $3500 do you not?

181 A. It might have been, yes. I know that was the fact.

Q. And you know that at that time you had 1,000,000 lath two thirds No. 1 and one third No. 2 worth $3000 don't you?

A. I think so, yes.

Q. You know that at that time you had 200,000 feet of lumber that was worth $1400 don't you?

A. I guess I did, yes. At that time I supposed I had timber to the amount of eight or ten million. I didn't know accurately. It was just merely a guess. The whole thing was a guess. You understood me to say that in giving these statements I attempted truthfully and honestly to state the facts as near as I could, for the purpose of obtaining credit upon it. That is true. I done the best I could. I didn't measure all those things. I just gave an estimate. I gave the best information I knew. I had personal charge of that business myself and worked there myself right along. I had been running that business for over a year or about a year at that time.

Q. And did the debts you owed at that time consist of a debt to Mr. Ragan of $400, to Mr. Brooks of $200, to the Phœnix Manufacturing Co. of $200 and for labor $1200 and the Empire Lumber Co. $100 amounting in all to $2100?

A. I think that was it, yes. That must have been correct as near as I could give it. I think it was substantially correct. I am not positive about that. I wouldn't swear to that.

Q. And that statement containing that information was signed by you for the purpose of obtaining the credit upon which you borrowed $2000 and represented by the note of date December 13th, 1899, doesn't it?

A. He wanted me to make out a statement and I made it out right there as near as I could by recollection. I didn't get money on that statement there at all. I don't think that statement was made for the purpose of obtaining that $2000.

Q. Didn't you say awhile ago that it was made as the basis of your credit for the purpose of determining what property you had and what you owed?

A. I didn't know what statement it was when you told me, sir; you didn't tell me. I noticed that that statement was made December 6th, 1899. It may be that was just one week before I obtained the money.

182 Q. Do you swear, Mr. Young, that that statement was not made as the basis of your credit for the purpose of obtaining the loan?

A. No, sir, I couldn't get the money on that statement.

Q. I didn't ask you if you got the money on that statement; of course you would have to give the note when you got the money but if you will answer my question we will get along better?

A. All right go ahead.

Q. Did you not make that statement for the purpose of giving Mr. Coffin information concerning your financial condition when you went there to borrow that $2000?

A. He asked me to make out a statement.

Q. Answer yes or no.

A. I made that statement, yes, for that purpose. I think I did make a good many statements to the bank from time to time as to my financial condition. I think I told Mr. Bundy that I had made several statements. I am not sure about that. I won't swear to that. I remember of testifying yesterday that it was usual to put in the mills at $2500 each in several statements I made. I knew there were other statements.

Q. If Mr. Bundy had listened to your evidence he would have known it wouldn't he?

A. I don't know anything about what Mr. Bundy would know. When I gave my testimony yesterday I attempted as near as I could to give it correctly irrespective of whether or not you had any statements relating to my financial condition.

Q. Do you think on seeing the statements that you made at the time that your recollection can be refreshed and that if you got mixed yesterday that you can correct yourself when I show you the statement that you made?

A. I don't know about that. I don't remember the date when I made my contract with the Chippewa Lumber & Boom Co. by which I purchased the timber on certain lands. I remember that I did such a thing. It was four years ago last winter. The second one was in October. I think the first one is there. I don't know. The one before this was the agreement I had concerning the shingle timber.

Q. That was not the one I am speaking about; the one I am speaking about is the one in which you purchased other timber for saw logs and other timber aside from shingle timber and paid $1450?

A. Yes, sir. I think that one was made October 9, 1900.

183 I remember that the $2000 was borrowed the December previous.

Q. And don't those two facts refresh your recollection so that you now know that at the time you borrowed the $2000 you didn't have any talk with O. H. Ingram about paying $1400 or $1450 for certain stumpage?

A. Not at that time, no, sir. I didn't give testimony to that effect yesterday. I didn't give any such testimony that I remember of. I will swear that I didn't almost.

Q. Well that will make it so. I understood you to tell about a conversation you had with Mr. Ingram at the time you borrowed the $2000 before that stumpage contract that you said yesterday cost you $1400?

A. No it was the other one. My shingle mill in Cadott was located right at the village, on some land that I had bought. I think there was somewhere in the neighborhood of 35 acres that I contracted for and was to pay $2500 for it and I paid $500 on it. When I borrowed this $2000 that had not been paid in full, never was paid, not the lands that I speak of.

Q. The mill property at Cadott was paid for at that time wasn't it?

A. Not the land wasn't, no, sir. I included the land and the mill as worth $4000. I didn't mean that the land was clear. I meant the mill was about clear. I owed some on that but I owed on the land. I didn't say anything about the land at that time because I didn't think about it.

Q. You thought about what it was that went to make up that $4000 that was clear which you called your mill at Cadott?

A. That has nothing to do with the mill at Cadott.

Q. All my questions that I have asked you recently are about the mill at Cadott; is that as you understood it?

A. That is as I understand it now, yes. I did understand it when I gave my evidence just now, but I had forgotten about the land. There was a fraction over 35 acres of land I had at the mill at Cadott. I am not sure just exactly. I owned 40 acres of land at the other mill too. I sold the land on which the Cadott mill was located. I sold it in the spring of 1902. I couldn't tell the date. I sold it to Laird, Norton & Co. I forget just how much I got for it.

Examined by Mr. BUNDY:

I am talking about the land in the woods; which land had he reference to.

184 Examined by Mr. WICKHAM:

Q. I try to make my questions plain. I was talking about the land in Cadott. That is what I asked all my questions about.

A. I never sold it to anybody. I never paid for it. I paid $500 on it and I let the parties have it back again. I did not sell it back. Well they foreclosed, there was a certain amount that they paid back on it, two or three hundred dollars. I mean that they paid me. I never took a deed of it, only a contract. I surrendered my contract. That was after I had abandoned the mill there. I can't tell the date. Not just before I went into bankruptcy; a year or two or two or three years. A couple of years. I had the mill right along up until after these logs were sold to the Waters-Clark Lumber Co. I didn't have the land that the mill was located on. No land at all in Cadott after I had let it go back.

Q. What title did you have to your mill, was it on leased land?

A. No, sir.

Q. Well when you gave these statements and said your mill at Cadott was clear and worth $4000 you meant that didn't you?

A. I meant about the land too, but I didn't think about putting it in that I owed on the land.

Q. You mean that your interest in it, what you had there was clear?

A. I said it was worth $4000. My interest in it including the land and the mill; certainly that is what I meant. The mill itself probably was clear. The mill wasn't worth $4000.

Q. If you owed for the land why didn't you state that in your statement?

A. I didn't think of it Mr. Wickham. I made that out at the bank and I didn't think a thing about it. That is the fact. My attention was not called to it when I said the mill was clear. I said there was something on it but I didn't know just how much. I said at that time it was partly clear but I owed some on it. Mr. Coffin wrote that down himself. I signed it. I can't deny that. I sold the land at the Paint Creek Mill to Laird Norton in the spring of 1902. I couldn't tell just the date. Sometime before I went into bankruptcy. I couldn't tell if it was about the month of May. I don't know about what time. I won't say because I don't know. I won't say anything I don't know about. I think it was before I

went into bankruptcy I have forgotten the price that I got for
185 it. I have no recollection. I couldn't tell. I can give information in this way that I had cut over onto Mr. Laird & Norton's land and trespassed and in order to clear up that trespass I gave them that 40 acres of land and a time check for $150.00. That is the extent of the land business. I trespassed on their lands. They ran over the line and took some timber off the land. I got several hundred dollars' worth of timber, that is the fact and in order to settle that up I took that way to do it.

Q. Where was the Paint Creek mill located with reference to your mill at Cadott?

A. I don't know what you mean by that "with reference." My Paint Creek Mill was south from Cadott about five miles on section 28 I think. I couldn't tell you in what section the Village of Cadott is. (Plat shown witness.)

Q. I show you plaintiff's exhibit X; where did you have your Paint Creek Mill?

A. It is situated on Paint Creek on section 28 in one corner of section 28 I should think. I won't be certain about that. Cadott is north of that four miles but we had to go four miles by road and then turn off and go a mile to the woods which made it five miles to the mill. Cadott would be in section 4 according to that. I don't know what side of section 4. I couldn't tell you if it would be about the town line Yellow river runs through Cadott there. There are a good many directions to Yellow River. It is pretty hard to tell which way it runs. It would be hard for anyone to give directions as to how that river runs. I don't know I am sure Mr. Wickham if in the vincinity of Cadott it runs generally in a westerly direction. It runs every kind of a direction through Cadott. I don't know what is the general direction.

Q. You don't know whether the general direction is westerly or easterly?

A. I wouldn't say because I don't know and I don't think anybody else does. I don't know whether the general direction is northerly or southerly through Cadott. I can't give any information on that because it is an impossibility. In Cadott I think I know north and south and east and west. I am pretty certain about it.

Q. Isn't it true that the general direction of Yellow River in the vicinity of Cadott is easterly and Westerly direction?

A. I wouldn't say because I don't know. It is as crooked as a ram's horn.

186 Q. Never mind about the ram's horn, never mind about its being crooked but try to give us something straight. I am not speaking about the crooks or the ram's horn. I am speaking about the general direction of the stream, does it not run in a westerly direction along there about the northern boundary of town 28 range 6 west?

A. I can't tell you what direction it runs, it is an impossibility. I don't know anything about the general direction nor nobody else can tell about that.

Q. No one knows where it comes from?
A. I presume so I never was at the head of it. It goes to the Chippewa River.
Q. East or west of Cadott?
A. Well I couldn't tell you which way it runs in. I think the Chippewa River is west of Cadott but I don't know what way the river runs in where it empties into the Chippewa. I know the Chippewa River is farther west than Cadott.
Q. Don't you know that the direction of the Yellow river in order to flow into the Chippewa would be a westerly course?
A. If it west straight west it would.
Q. Whether it went straight or crooked west it would be a westerly course wouldn't it?
A. Some places it goes a westerly course and some places another course.

Mr. WICKHAM: I move to strike out the answer of the witness.
The court denied the motion, to which ruling and decision the defendant duly excepted.

(Former question read by reporter.)
A. I presume it would yes.
Q. I didn't intend to spend very much time on the course of the Yellow river but I wanted to get some information and if you want to answer questions fairly and truthfully I think you can give some information of the subject; I will ask you the question again and see if you can do any better; isn't it true that the general course of the Yellow river in the vicinity of Cadott and for some miles easterly is a westerly direction?
A. Well if you call it that it might be yes. It goes west of course. The Chippewa River is west and it empties into the Chippewa River and it would naturally do that way but not in a straight line.

Mr. WICKHAM: I move to strike out the answer as not responsive to the question.
The motion was denied by the court, to which ruling and decision the defendant duly excepted.

187 Q. Now Mr. Young in answer to my last question you gave me some general information as to the general direction of the Yellow river at Cadott; is that also the general direction of the Yellow river some three or four miles each way from Cadott?
A. It varies.
Q. And further up the river from Cadott is the general course of the river in a southerly direction?
A. I don't know much about that Mr. Wickham; I couldn't tell you. My upper logs were put in that river farther up; they were up there I couldn't tell you if the general course up there was southerly and for some miles each way in the vicinity of Cadott the general course is westerly. I wouldn't say because I don't know. When I hauled my Cadott logs they were landed in the Yellow River about a mile above Cadott; that would be east of Ca-

dott. On an average those logs were hauled four or five miles, some further. They were hauled from the southern side of the township to the northern side.

Q. And your mill is in section 28 which is in the southern side of the township?

A. Well some of the logs were hauled close around the mill. We went by the mill with most of the logs that was hauled out.

Q. Then these logs that you hauled from the southern side of town 28 and the vicinity of the mill were all hauled away from the mill wer-n't they?

A. Every load of logs that was hauled went by the mill. Passed the mill down the road to the river. I didn't intend to saw all those logs at that mill. We sawed some of the logs at that mill that I had brought to Cadott or banked on the Yellow River. We did not saw logs at that mill that I banked on the Yellow river. We wouldn't haul them to the Yellow River and then bring them back again and saw them. All the logs that I banked on the Yellow river were intended to be sawed at some other place aside from my Paint Creek mill. Those were logs intended to be sawed at my mill in Eau Claire.

Q. And did you intend or did you put up your mill in the city of Eau Claire for the purpose of sawing whatever lumber you afterwards would saw?

A. Not altogether, no sir.

Q. You didn't put up that mill expecting to saw the logs just for one year did you; you intended to use it for more than one year didn't you?

188 A. I intended to saw right along, yes sir. I did not intend to put in my other saw logs into the Yellow river that I had in that vicinity and saw them at the Eau Claire mill, not what was left. I did not intend to saw the 2,000,000 that were left, the same as the logs that I had put in because it cost more to get them out than they were worth. I don't know if there was any difference in the 2,000,000 that was left and the logs that I put in at Cadott. I didn't look at them at all. I don't know that there was any difference. There may have been.

Q. If you don't know there was any difference why was it you intended to take some of them to Eau Claire and build your mill for sawing them and not take these others?

A. At that time I didn't think it would cost so much to get them out but it didn't pay to get them out so I concluded to keep the old mill and put in logs the next winter and run that in the winter and just get what I could off and saw up there in the winter time, that is the next winter.

Q. Did you have any machinery in your mill at Cadott in the summer or fall of 1901 except the shingle machinery?

A. Well I don't know about the date. I took lots of machinery from the other mill out there.

Examined by Mr. BUNDY:

Q. He asked about the Cadott mill?

A. Yes I took it from the Cadott mill out to the other mill and the rest of it——

Examined by Mr. WICKHAM:

I couldn't tell you when it was I did take it out. I don't know the year. I ought to know it but I don't. I can't state now. I never took any saw mill machinery from Cadott mill out there to the Paint Creek mill. I didn't say that I did. In the Cadott mill I never had what you might call saw mill machinery. I never sawed any lumber in the Cadott mill, nothing but saw logs up into shingle blocks. I never manufactured anything at the Cadott mill except shingles. I never took saw mill machinery from any other mill to the Paint Creek mill.

Q. Where did you get the saw mill machinery that you had in the Paint Creek mill?

A. It was there, some of it when I went there and the rest of it I got from the Phœnix and some from the Northwestern
189 Lumber Co. I couldn't tell just what time I got it. I got it from the Phœnix all along and the Paint Creek mill was built there and some of the machinery was in it. There was a rotary saw in the Paint Creek Mill. I had a little edger; sort of a trimmer. I had only one edger and one rotary. We had a lumber trimmer and a slab trimmer to cut up four feet long for lath and then a cut off saw or two. I think there was a couple of cut off saws I had. I had a boiler and engine there; only one. I last sawed lumber at that mill just before it burned down. I was sawing lumber then when it burned. I don't know whether my sawyer was Mr. Frazell or somebody else. I couldn't tell just which it was. At the time the mill burned we had stopped manufacturing shingles I think. We had only started up a few days before that. We didn't saw very much. They had the smallpox out there. We did saw some shingles during the winter. I couldn't tell you just how many men I did have employed sawing shingles during the winter. There wasn't so very many. I did saw lath and lumber also during the winter. I did not saw very much lumber during the winter. I couldn't tell you how much. I couldn't tell you just exactly how much that does mean. It was not a few hundred thousand. There wasn't very much. I can tell you that. I wouldn't say because I don't know. The last time I sawed any lumber of any material amount at the Pine Creek mill was during that summer; during the summer of 1901 I think it was. I couldn't tell you the date in the summer I quit the regular work of sawing lumber at that mill, but it was when I got the logs sawed out. I couldn't tell you the date. It was along in the summer sometime, I couldn't tell you just what date. It would be impossible. I couldn't tell you whether it was the beginning or the last end of the summer of 1901. It wasn't very late, what you might call late. We didn't saw much lumber after the month of October 1901 at the Paint Creek mill. We sawed some lumber during the winter.

Q. That wasn't my question; I asked you if substantially all

the work you did at that mill after October 1901 was the sawing of lath and shingles?

A. We sawed lumber also. I know you didn't ask me that. I don't want to say I just sawed lath and shingles when I sawed
190 lumber too. I understood the question that way. I have told you I sawed a very small amount of lumber and the time I quit the regular work of sawing lumber was in the summer of 1901.

Q. Now I ask you if substantially all the work that you did at that mill after that time was the sawing of shingles and lath?

A. We sawed some lumber too. I don't see how I can answer your question any other way. We sawed lumber, lath and shingles. I certainly have answered it to the best of my ability.

Q. You are trying to answer them are you?

A. I have answered it I think, Mr. Wickham. I don't have to try to when I have. I simply have answered it.

Q. I didn't ask you if you had answered it; I asked you if you were trying to?

A. I don't know how I can answer it in any other way. I did not manufacture at my Cadott mill anything else but shingles.

Q. When did you last manufacture shingles at the Cadott mill?

A. I ran that two summers Mr. Wickham. It was in 1900 I guess when I last manufactured shingles at the Cadott mill. I am not positive about that. I think I manufactured lumber at the Paint Creek mill a couple of seasons. I commenced generally the first of the winter to manufacture lumber at the Paint Creek mill I first commenced to manufacture lumber at the Paint Creek mill in 1901 I think. I don't know for sure just the date or the year. I couldn't tell you (paper shown witness). I believe I did on February 25, 1901, make a financial statement to the Eau Claire National Bank of my assets and liabilities.

Q. Is that signed by you?

A. That is my name, yes, sir. I think it was made at the time it bears date. I don't think the dates have been changed.

Q. Did you at that time have 5,000,000 shingles worth $1.50 a thousand amounting to $7,500; 900,000 lath at $2.50 per thousand amounting to $2,250; 200,000 feet of hard wood lumber worth $2400; 900,000 feet of pine lumber worth $9000; moneys due from H. C. Mears & Co., of Chicago, $2000; M. L. Boyle, Keokuk, $4000; North Western Lbr. Co., $64.00; R. B. Salter, Colby, $250; sundry accounts, good $400; 1,000,000 feet of logs worth $6,000; 200,000 feet of hard wood logs worth $600, amounting in all to $35,564?

A. As near as I could make out the way I made that up, yes sir. There was nothing accurate about it because I just guessed at it.

Q. Just answer my question; did you have in addition
191 to that a plant worth $6000, timber worth $12000 and hardwood lumber worth $400 making a total of $53964?

A. As near as I could estimate it, the way I estimated it at that time.

Q. Did you estimate it as correctly and truthfully as you could?

A. By guess work, yes, sir. As near as I could I used my best endeavors to give a correct statement of what I had at that time. I

wasn't positive that I had property at that time of that value, because I hadn't figured it up.

Q. I asked you if you believed that you had?

A. I thought from the way I estimated it that I did. I simply guessed at it. That was all. I didn't know whether it was right or not.

Q. Did you believe at that time that you then had property worth $53946 from the best information that you then had as to its quantity and value?

A. Yes, sir, the way that I estimated it by guess I thought it was that much. I must have at the same time and in the same statement given a statement of what I owed.

Q. You see that you did do you not (paper shown witness)?

A. I generally did as near as I could. I had nothing to go by I presume I did make such a statement. It is down there and I signed the paper. That is evidence that I did. When I made the statement Mr. Coffin asked me what I thought I had and I told him. I don't know that he asked me in particular about the items. He was very careful to ask me to state to him what I had, and certainly tried to get as correct information as he could.

Q. And did you try to give him as correct information as you could?

A. As near as I could by guess work. I had nothing to go by at all. I had a little idea of my own business to go by. I had an idea of what I was doing.

Q. Was it only a little?

A. Enough. All that was necessary.

Q. Does the statement of liabilities consist as follows:

Men's wages not over	$1000.
Brooks	200.
Phœnix Manufacturing Co.	150.
Eau Claire Grocery Co.	200.
Eau Claire Mill Supply Co.	370.
Eau Claire National Bank	6132.61
Reagan	15315.67
Total	23368.28

Is that a list of the liabiltities appearing on that statement?

A. It is not correct sir. That is a list of liabilities that appears to be on that statement.

Q. Why didn't you answer before; are you trying to evade
192 the question?

A. No, sir, I don't want to evade any question. That is the list of liabilities appearing on that statement, but it is not correct, because I never gave him any statement that I owed Mr. Ragan. That has been put down there since then. I never gave him any account of Ragen because I didn't know what I owed him. I never owed him $15000.

Q. Weren't those the notes that you had given to Ragan and that the bank then held; isn't that what it means?

A. There was nothing said about Ragan at that time, not a word. It wasn't on the statement when I signed it.

Q. You swear it was put on afterwards do you?

A. I think so. I couldnt' tell if that $23368.28 appearing on that statement was the total amount I owed at that time to all persons. I think it was though. I wouldn't swear positively.

Q. Then it didn't make any difference whether you called it the Reagan account or the bank account, I don't know which you call it; then you had as you believed and as appears from this statement at that time substantially $30,000 in property over and above all your debts did you not?

A. I thought I had it sir, yes. I don't know whether Mr. Coffin believed that my statement was correct or not; I told him it was not correct.

Q. Did you tell him at the time it was not correct?

A. No, not correct, no, sir. I told him that was a guess. At the time I didn't say it was not correct. Of course I told him it was correct to the best of my knowledge. I told him I couldn't tell exactly.

Said statement marked defendant's exhibit 2. It is dated February 25, 1901. Paper marked for identification defendant's exhibit No. 3.

Q. I show you a statement dated May 12th, 1901, and marked defendant's exhibit 3; is that a statement prepared by you which you gave to the Eau Claire National Bank of your assets and liabilities at that time?

A. Yes, sir, that is. That is in my hand writing. The total amount of assets which I then stated that I had at that time is $51531.1- and the amount of the liabilities is $15512.00; that is the figures on there. The liabilities do not include the amount I owed the bank at that time. That would be the liabilities outside
193 of what I owed the bank. The way I figured it there at that time I did have property which at a fair valuation was worth $51,531.16:

Q. I know you figured it worth that but my question is, in your opinion did you have property worth that much at that time?

A. To the best of my ability, yes, sir. I believed that was a fair estimate of the value of my property at that time in the way I got at it.

Q. Why do you qualify your answer by saying "in the way I got at it;" my question is, did you believe that that was the fair valuation of the property you had at that time?

A. That was an estimate and——

Q. I didn't ask you that; I asked you, in your opinion was $51531 and 16 cts. a fair valuation of the property which you had at that time?

A. I thought so, yes, sir.

Q. And you think so now, do you?

A. Well I don't know. I think that was a correct statement of the amount of debts I owed at that time outside of what I owed the

Eau Claire National Bank. I don't remember just now, but I think it was. I wouldn't be positive about that.

Q. In the statement marked exhibit 2 I called your attention to an item M. L. Boyle Keokuk, $4000 as a part of your assets; is that the same Boyle that was owing you 960 and some odd dollars?

A. Yes, sir. I think the account was $4000 at the time I made the statement exhibit 2. At the time I made the statement marked exhibit 3. I couldn't tell you if the account had been reduced by payments to $2000. I think it must have been. It so appears on the statement. It is the same party and the same account.

Paper marked for identification defendant's exhibit 2.

Q. I show you statement dated July 5th, 1901, marked defendant's exhibit 4; is that statement with the exception of the figures at the bottom in blue ink, in your handwriting?

A. Yes, it is, sir. The portion in blue ink at the bottom I think is in the handwriting of Mr. Coffin. That is one of the financial statements that I furnished to the Eau Claire National Bank at the time it is dated. I think I did at that time have a million and a half feet of lumber in the yard worth $15000. According to that statement my assets at that time were worth $49266.93. That statement was true as near as I could get at it. I think my liabilities
194 at that time outside of what I owed the bank were $1173.00.

Q. And the portion written at the bottom in the handwriting of Mr. Coffin, is that a statement of the amount that you owed the bank and on time checks?

A. I didn't know anything about it at that time. I don't think I did know at that time anything about what I owed the bank. I knew something about it but I didn't know the exact amount. I knew something about it but I didn't know what it was.

Q. Well as near as you can tell was the total amount of indebtedness at that time including what you owed the bank and all other persons substantially $24938.43?

A. I don't know anything about that at all, sir. I know I owed them but I don't know just how much. That is as near as I can tell as to what I owed at that time because I didn't know. I didn't know exactly. I wasn't there to tell anything at that time because there was nothing said at that time. I did try to state as near as I could what I owed outside of what I owed the bank at that time and that is down there.

Q. And at that time as near as you could tell you had substantially $24000 in property at a fair valuation over and above your debts?

A. I couldn't tell you now sir.

Q. Did you believe at that time that you did have property that at a fair valuation was worth about $24000 over and above all your debts?

A. As near as I could get at it.

(Paper marked for identification exhibit No. 5.)

Q. I show you a statement dated September 1, 1901, marked defendant exhibit No. 5; is that a statement of your assets and liabili-

ties prepared by you and furnished to the Eau Claire National Bank at that time?

A. Yes, sir; it is. I signed it. As a part of my assets I did have lumber on hand worth $16000 as near as I could get at it. I think that was pine lumber. I think I did have hardwood lumber at that time worth $3000, as near as I could get at it. I think I did have shingles at that time worth $1000 as near as I could get at it. My assets at that time were worth $46740.49 as near as I could get at it and the amount of my debts at that time outside of what I owed the bank was $1072 as near as I could get at it. That was true and correct as near as I could get at it. I don't think I did include
195 in the list of my debts these time checks that I then owed the bank at Cadott. If they are not down here I didn't. I didn't include them because I didn't know how much they was. I didn't find out because it was not necessary; I didn't think so.

Q. Do you mean you were not trying to furnish a truthful statement?

A. There was nothing said about time checks. He didn't ask me to make such a statement as that. He said to give him a statement of what stuff I had there. I never put the time checks in. There was only one statement that showed what I owed the men.

Q. Several of them Mr. Young?

A. I don't know of any more Mr. Wickham, it may be. I know that these time checks represented indebtedness of mine to the amount of about $1600.

Q. Why didn't you tell Mr. Coffin something about that at that time?

A. Well sir that was the only time he ever asked me to make out a list like that.

Q. Ar'n't all these lists like it?

A. They wasn't asked to be made out anyway. I didn't tell Mr. Coffin anything about the $1600 I owed the bank at Cadott because I didn't know how many checks there was out. I did tell him that. I told him there was some checks out but I didn't know how many there was.

Q. You didn't tell him anything about the $1600 or any other amount being held by the bank at Cadott at that time did you?

A. I told him I had some time checks out. Certainly the Bank at Cadott requested me several times to pay them. I did not have numerous letters from them from time to time stating the amount I was owing Mr. Monroe didn't tell me a great many times the amount that I owed. I didn't know substantially what it was because he was taking them all the time. I didn't know substantially what it was in September 1901. I supposed he had them all at that time. I didn't know he had them all. I didn't know how many he had. I kept the stubs of my checks. I could have found out very easily how much they footed up if I thought it was necessary. I did think it was necessary to give a truthful statement as to my assets and liabilities as near as I could. I couldn't tell you when I did put the last machinery in the Paint Creek mill. The last machinery
196 I put in was a lath mill. I couldn't tell you when it was. I don't know the year. I don't think it was after the year 1901.

I think it was before. I am not positive about that because I don't remember. I had that Paint Creek mill listed at $2500 at the time of the fire; before the fire. That Paint Creek mill was worth at the time of the fire somewhere in the neighborhood of $7000 and over.

Q. Was there any reason why you should not make a correct statement as to the value of that mill in your financial statement any more than other property?

A. I have forgotten what I estimated that at. I don't know what I estimated it because it had burned down. It hadn't burned down at the time I made my previous financial statements.

Q. No- just answer the question yes or no; do you estimate the value of that mill that burned on a conservative basis?

A. I did $2500 of it yes sir.

Q. Was there any reason why you should estimate that particular piece of property on a more conservative basis than any other property?

A. There was a reason why I done it that way yes. There was a reason why I estimated that on a more conservative basis than the other property. As near as I could I estimated all my property at what I believed it was worth I did believe that the Paint Creek mill was worth $7000 when I made my financial statements in the year 1901 and 1902, because there was two mills there. I say yes.

Q. Do you remember of testifying in the bankruptcy proceeding at Madison in June 1902 concerning the value of that mill that burned?

A. I think I testified. I don't remember what I testified to. I don't remember if I testified at that time that it was worth $2500.

Q. Well let me see if I can refresh your recollection:

"Q. How much was it worth?

"A. After the mill burned out?

"Q. Well at the time—I mean in October 1901—had it burned then?

"A. No it hadn't burned.

"Q. Well how much was it worth?

"A. Well I couldn't state. I think it was worth about $2500."

Did you so testify?

A. I must have yes sir. I suppose that is what I believed it was worth. I didn't think about the other mill being in there.

Q. You didn't think there was any reason why it should be
197 worth anything different from that did you?

A. I should have thought so if I had thought of the other mill being in there, but I didn't think about that. I forgot about part of the other mill being in there because I had always listed that mill at $2500. That is why I put that down in that way. I had listed the other mill at $2500 always. Now I say this one was worth $7000 because the two mills were together partly, that was the reason I done so. When I testified in the bankruptcy proceeding that that mill that was burned was worth $2500 I did make a mistake, because I did not think of the other mill being in there.

Q. If you took a little machinery from the other mill when the old mill was worth only $2500, you think that that little machinery

that you took and put in this mill would make this mill worth $7500?

A. Well that is what he figured. Charlie Coffin is the man that figured it. He was not up there. The adjustor was up there. Charlie Coffin wasn't up there. The adjustor was up there right immediately after the fire. After the mill had burned up. He didn't ask me any such thing as what there was in it. It was plain to be seen.

Q. Did he ask you anything about what was in the mill?

A. It was right there to be seen. I told him as near as I could. He did ask me something about what was in the mill. I told him there was machinery in there. I think I did tell him what it consisted of. I don't know.

Q. Did you make out and sign a statement as to what it consisted of?

A. No sir, I didn't with him. I didn't make out any statement. What Charlie Coffin figured on was the information that was brought to him as to the fire when he had never seen the mill; that was correct. I know that information was more accurate than the information I had been giving to Mr. Coffin as to the value of that mill when I was borrowing money at the bank. I carried $1000 insurance on that mill.

Q. You carried $1700 insurance on your property generally including the lumber?

A. I don't know. Different times there was different insurance. I couldn't tell you how much. I don't think I ever had more than $1000 insurance on that mill. I never knew of it.

(Paper marked for identification defendant's exhibit 6.)

198 Q. I show you a statement marked defendant's exhibit 6 dated Oct. 11th 1901 and I ask you if that is a statement prepared by you and furnished to the Eau Claire National Bank as to your assets and liabilities?

A. Yes sir. I did at that time have $12000 worth of pine lumber the way I estimated it as near as I could. I did have $3000 worth of hard wood lumber as near as I could estimate it. I did have property at that time worth in the whole $42,383.46 as near as I could get it. I think the debts which I owed at that time outside of what I owed the bank, were debts amounting to $1005 as near as I could get at it. I didn't include those time checks that the bank at Cadott held at that time either; I didn't include no time checks at all.

Q. Was your indebtedness at that time to the Eau Claire Grocery Co. only $100?

A. I couldn't swear to that. I think it was but I am not positive about that Mr. Wickham.

Q. You said in your direct examination yesterday that in your statements or some statements you didn't include notes; was not your indebtedness to the Eau Claire Mill Supply Co. an indebtedness upon a note?

A. I don't know that I said I didn't include notes, I had that in of course. I think that was on a note; that appeared in my statement.

Q. You said something about that hay that you had, I didn't

just understand how you intended to leave your evidence as to that hay; was that hay that was included in your statement of February last 1902 hay that you had on hand at that time?

A. Why I think so yes sir. I am not positive about that.

Q. You had more hay in the fall and had been feeding out and disposing of it?

A. I didn't know how much there was, and I put it in at 20 tons. I don't know that I had seen it Mr. Wickham. I had seen it but I didn't know for sure what it was. I didn't know substantially what it was. I didn't know substantially about any of them at all; in fact I had never measured it and I didn't know. I just merely made a guess at it.

Q. Why do you say a guess, you mean the best information you could give don't you?

A. The best I could judge yes, just the same as you would judge about a pile of lumber if you saw it. I don't think I did have 40 tons of hay in the fall. I never said I did. I don't think I ever said I did. I got some hay I think during the winter. I might have had 40 tons of hay during the whole winter. I don't think I ever
199 did at one particular time have 40 tons. I couldn't tell you a thing about how much the amount was that I had. When I made this statement of October 11th 1901 I don't know I am sure if I did value my two mills then at $5000. I will look and see if you give me time to get on my glasses. It appears to be so right there. I had two mills that I valued at $5000 at that time. I didn't put them in at $2500 each but it is all the same. As near as I could get at it I had 4,000,000 feet of pine stumpage at that time worth $12000. (Paper marked for identification defendant's exhibit No. 7.) I guess I did also furnish a financial statement to the bank on November 19, 1901 marked defendant's exhibit 7.

Q. The total does not seem to be in your hand writing Mr. Young?

A. There is a great deal of it not in my hand writing.

Q. There is some memoranda attached to it that is not a part of your statement; I am not referring to that. Those items and figures constituting the statement and values are in your hand writing are they not?

A. I think they are yes sir.

Q. Did you at that time have property of the kind and quality and of the value that you stated in that statement that you did have?

A. To the best of my ability, as near as I could get at it yes. That property was worth substantially $40,141.72 as near as I could get at it. I think the debts which I owed at that time outside of what I owed the bank, were debts to the amount of $1292.90; I am not positive about it but I think that was right. That is the statement that I gave the bank at that time.

Q. Had you still forgotten about what you owed the bank of Cadott at that time?

A. I never forgot it. I didn't know what it was but I knew I owed them there. Mr. Monroe hadn't up to that time informed me that he had these time checks and wanted me to pay them and tell me repeatedly what they were. He had told me that he had some

time checks and he wanted I should settle them as quick as I could. I did not know substantially what they amounted to. I didn't ask him. I had no idea.

Q. Didn't know whether it was $50.00 or $1600.00?

A. I didn't know what they amounted to. I certainly did issue the time checks I didn't know the amount of them. I didn't think it necessary to find it out. I had no money to pay them.

200 Q. You didn't think it was necessary when you were borrowing money from the Eau Claire National Bank and giving them financial statements as to your assets and liabilities, to put in an item amounting to $1600; is that what you mean?

A. I don't understand you.

Q. Do you mean that in furnishing a statement of this kind to the Eau Claire National Bank as a basis upon which to obtain further credit that you didn't know it was necessary to include an indebtedness that you owed amounting to $1600?

A. I never put in time checks in any of them. For that reason I never thought of that. The reason I didn't put them in was because I never thought of it.

Q. Was it left out because you forgot it?

A. I never thought about it.

Q. I must insist that you answer my question. Was it left out because you forgot about it?

A. I never thought anything about it at all.

Q. Well had you forgotten it?

A. I don't know as I forgot it because I never thought of it. I never had put in any time checks and consequently——

Mr. WICKHAM: I move to strike out of the answer "I never had put in any time checks" as not responsive. I think he should answer the question.

The COURT: Yes he should answer the question but it is not necessary to strike out everything that is not strictly responsive. To which ruling and decision the defendant duly excepted.

At the time I furnished this statement to the bank of November 19, 1901, I did not know that I was owing the bank at Cadott substantially $1600. I knew they had some time checks but I didn't know the amount. I knew I was owing them some amount. I presume I could have went there and found out if I had wanted to. I could have found out from my own books by going back to the stubs. I did not make any effort to do so. I don't know that I forgot to. It never came to my mind to do it because I never had done it before.

Q. Did you purposely fail to do it thinking it might affect your financial credit?

A. No sir not intentionally I did not.

Q. Then in making these different statements you attempted to give correct and as good information as you possibly could give did you?

A. In the way that I gave it yes sir.

Q. That may be an honest way and may not; I am asking

201 you did you attempt to give as correct and accurate information as you knew how as to your financial condition?

A. The best I could sir, according to the way I made it out.

Q. You keep getting in "according to the way I made it out"?

A. Yes that is proper I should think. I don't know. I did not attempt to give correct information as to my assets and liabilities for the purpose of obtaining credit. I didn't attempt to do that. I was just asked for a statement and that was all.

Q. You didn't attempt to give a correct one?

A. As near as I could I told him.

Q. You said you didn't attempt to give a correct one?

A. I did not, no sir. I did attempt to make it as correct as I could I say. I certainly did attempt to make it as correct as I could.

Q. I understood you to say you did not?

A. I don't think I did. I came to make so many statements to the bank as to my assets and liabilities because I was requested to do so. The request was made by Mr. Coffin.

Q. After the request was made would you go up to Cadott and look over what you had, look over your books and make up the figures in that way and either send or bring in a statement?

A. Sometimes I did and sometimes I took it from memory, most always from memory as near as I could. I don't know whether I could remember a list of figures running in dollars and cents to cover one of these pages or not. I couldn't state if I ever made up one of these statements from memory until I see it.

Q. I have shown you six or seven, do you think you could make up one of them from memory?

A. Partially yes sir.

Q. But these matters which related to the books did you not consult the books to make them up from the books?

A. Sometimes yes sir.

Q. And sometimes did you put down figures that you didn't find in the books at all and didn't know anything at all about their correctness?

A. I don't know that I did. I might have and I might not. Sometimes I would forget. My books wasn't kept posted up and consequently I made a good many errors in giving them I will admit.

Q. I didn't ask you if you made errors; did you arbitrarily set down some figures as being accurate to a cent without looking at your books at all?

A. Not intentionally no sir.

202 Q. I didn't ask you if you did that intentionally; did you sit down and put down some arbitrary figures without looking at your books?

A. I didn't set down anything arbitrarily. I didn't intend to do so. I think I did look at my books when I made out the statements of what I owed and what was owing me. I don't know that I could possibly do it in any other way than by looking at my books. I think I couldn't remember a column of figures to get the figures exact without looking at the books. I don't know if any one else could. I don't know that I could tell from that whether I did look at the books when I made out those statements. (Paper marked for identi-

fication defendant's exhibit No. 8) I guess I did on January 1, 1902 make to the Eau Claire National Bank a financial statement of my assets and liabilities which is marked exhibit 8. The total amount of property I had at that time was $37,821.35 according to this. I don't know whether that was correct or not. It was correct to the best of my knowledge and belief. As near as I could get at it I had at that time 1,000,000 feet of pine lumber worth $10,000. As near as I could get at it I had at that time 200,000 feet of hard wood lumber worth $2,000 and shingles worth $500.00 and lath worth $375 and time accounts that were due me worth about $4000. My debts at that time outside of what I owed the bank amounted to $1175 as near as I could get at it. I still included the note that I gave to the Eau Claire Mill Supply Co. I always have I think.

Q. You always included the notes that you owed outside of the notes that you owed the bank, because they knew about their own notes; that was the idea wasn't it?

A. No I don't know what the idea was. I had always put that on.

Q. You put it on because it appeared on your books and you knew you owed it didn't you?

A. Yes it did appear upon the books. The other notes I owed did not appear on the book.

Q. Is there any reason why this note should appear on your book and the others not appear on your books?

A. Well I don't know, only it was stuff that I got that I gave them credit for and gave them a note.

Q. Did you attempt to keep an accurate account of your
203 books so you would know what you were owing and what other people were owing you?

A. No I didn't keep very good account of things.

Q. I didn't ask you if you kept very good accounts; did you attempt to keep an account that was sufficiently correct so you could tell what you owed others and what others owed you?

A. Some people I did yes sir.

Q. Was there any reason why you didn't attempt in all cases to keep a sufficiently correct set of books so you could tell what your financial condition was?

A. I didn't think it was necessary to keep everything. I done it in my own way to the best of my ability.

Q. Did you have any object in keeping your books in any other way than to keep them so they would furnish you information as to your condition.

A. I tried to keep them as best I could. In giving information from my books I did try to give that information as best I could.

Q. And is it your best judgment and information that at that time your property was worth the amount that you state here in this exhibit 8?

A. As near as I could make out yes sir. I don't know whether I mailed that statement to Mr. Coffin or handed it to him.

Q. You notice a letter attached to it which says "Mr. Coffin Eau Claire: Dear Sir: Enclosed find statement. Will see you tomorrow

sometime and give you the amount of logs I had in up to last Saturday night. Yours respectively, John H. Young?

A. That is proper sir yes sir.

Q. Had Mr. Coffin asked you for a statement of the amount and value of your property and the amount of your debts and also a statement of the amount of logs you had in?

A. He wanted the scaler's statement I think.

Q. He wanted both statements?

A. He asked me for it when I was down there and I didn't happen to be going down and I sent it to him. He asked for a statement of the amount of property I had and the value and the amount I owed and also a statement of the amount of logs I had in. Pursuant to that request I made out this statement of January 1, 1902 and sent it to him. And then when I came down the next day or two after I think I gave him a statement of the amount of logs I had put in and scaled up to that time. I don't remember what it was. I couldn't tell now if I would see it. I don't know what Mr. Coffin wanted that information for. He didn't say.

204 Q. What did you understand he wanted it for?

A. I didn't understand nothing at all. Had no understanding at all about it. He didn't say at all. He wanted these statements because he wanted to know something of what I had; that was all .

Q. Why did you think he wanted to know what you had?

A. I didn't know what his thoughts were.

Q. I am asking what your thoughts were?

A. I didn't understand it that way. I didn't know what he wanted to know for. I didn't know what he thought about it. I didn't think anything about it. I just merely done as he requested.

Q. You were very ignorant in that matter I suppose and made out those statements without the slightest idea of what they were for, is that your testimony?

A. No I knew that he wanted them and I made them out for him for that purpose because he wanted them made out. I suppose he wanted to look at them and probably the bank officials wanted to look at them. I thought that they wanted to look at them to see how we stood. I think they thought I was getting in debt pretty heavy. I think they were preparing to go for me. That is what they was doing.

Q. You were preparing to furnish pretty big statements so as to show you had sufficient property?

A. No sir, I done it to the best of my ability. I wanted them to come up and see for themselves.

Q. You think they were preparing to go for you for a good many years from the time they loaned you money, because they got statements right along?

A. Well, they hadn't. I didn't say that they hadn't got statements from me right along.

Q. Well, then, you know that they wanted to find out your financial condition, didn't you?

A. I presume that was it. I didn't know it for certain. I didn't

know what their thoughts were but I presumed that was it. As near as I could in the way that I done it I tried to tell them my financial condition correctly and honestly.

Q. Was there any substantial difference in your financial condition between January 1, 1902 and February 1, 1902, when you made those two different statements?

A. I owed more money I suppose.

Mr. WICKHAM: I move to strike out the answer.

The court overruled the motion, to which ruling and decision the defendant excepted.

My financial condition was the same on January 1, 1902,
205 as it was on February 1, 1902 only that I was in debt more in February. I couldn't tell you how much more. I don't know that I had any more property on February 1, 1902 than I had on January 1, 1902. I must have had some more, not very much. There must have been more money due for wages of men February 1st.

Q. And your property had increased in value because of the fact that those men had been working on logs and timber and you got the benefit of their work, did you not?

A. Well in one sence I did yes sir.

Q. Well then I will go back to the question I asked you before: do you think there was any substantial difference in the value of your property over and above your debts on February 1st than on January 1st?

A. The difference was this, that I wasn't making any money putting in those logs and was running in debt, consequently I wasn't ahead any. I know I wasn't ahead any. I did on February 1, 1902, have property outside of my book account that was worth $37,633.20 as near as I could make out and book accounts to the amount of $4,607.75 as near as I could make that out at that time. That was true and correct as near as I could make it out at that time.

Q. So that would amount to $42,341.25?

A. I haven't computed it. I presume that is right. On January 1, 1902, I might have owned 40 tons of hay worth $8 a ton, $320. I don't know. Of course it was a guess. Refreshing my recollection from that statement, that was the best information I had.

Q. And seeing that statement you now know that you had about that amount do you?

A. I think I did yes. I don't know of course for sure. On February 1, 1902, aside from the claims that were due me, as near as I could get at it my other property was worth the amount appearing in this statement marked plaintiff's exhibit L, the statement of February1, 1902. That is a true and correct statement of the amount and value of my property at that time as near as I could get at it. I do believe that that was a fair statement of the value of my property as near as I could get at it. I think it was actually worth that amount as near as I could get at it.

Q. And you knew as well at that time when you were there on

the ground and had looked over the property and examined
206 it to make a statement concerning it, you knew as well as you know now as to what it was then worth?

A. As near as I could get at it at that time yes sir.

Q. That is not the question; you knew as well at that time when you were there on the ground and had looked over the property and examined it to make a statement concerning it as well as you know now as to what it was then worth?

A. I think so yes sir.

Q. And in this statement of February 1st I call your attention to an item of 1,384,000 feet of logs banked in Yellow River, $11,072; were those what have been referred to here as the Cadott logs?

A. I think so yes sir. I don't think I did include in this statement of February 1st anything with reference to the upper logs that have been referred to. I don't know how many there was at that time. I don't know if they don't appear in any of these statements I furnished the bank. I couldn't swear to that.

Q. Isn't that your recollection that they do not appear in any of these statements?

A. I think not but I am not positive. I don't think they do.

Q. Now with regard to the saw mill, or the mill, your statement of February 1st says 2 mills at $2500 each, $5000; one of those mills was the mill here in Eau Claire was it?

A. No sir it was not. Then the statement does not include the value of the mill here at Eau Claire at that time and none of the statements include my house and lot in Eau Claire that I have occupied as a home and does not include my personal property and effects in and about the house. The amount that I was owing to the Eau Claire Grocer Co. on February 1, 1902 was not $400.00. I think it was more.

Q. Why did you put it in as $400 if that was not correct.

A. Well there was some time checks at the Bank of Eau Claire. I didn't think about that at that time. The time checks is a part of the Eau Claire Grocer Co.'s claim. I couldn't tell you just what it is.

Q. I understood you to say that that was for supplies or for groceries; you said yesterday it was for groceries?

A. Yes it was time checks given for groceries. That went to the Bank of Eau Claire. That was another bank. I gave them to
Mr. Rowe. I suppose he put them in there. I think that was
207 the way of it. I don't know just exactly. I bought groceries from the Eau Claire Grocer Co.

Q. And you issued some time checks and gave them to them?

A. In some way that way, yes sir. I don't know just how it was. I know that they got hold of them. So far as my dealings in the matter was concerned I think they were with the Grocer Co. I am not positive about that. I know they got the checks. It was for groceries that I got there. I knew I was owing them whatever it was; I didn't think about it at that time.

Q. How much were you owing the Grocer Co. on Febry. 1st?

A. Well I suppose I was owing them about $400—on February 1st did you say?

Q. Yes?

A. Well I didn't know. I knew that I owed them $1500. I presume I did at that time. There was some notes or time checks in that bank that I forgot to put in. I just estimated this and I couldn't tell by the books just how much I owed them. I don't know that I did know substantially how much I owed. I could have found out but I didn't think about it.

Q. When you entered that item down there do you mean to say you didn't think about finding out how much it was?

A. I didn't think about the time checks at all.

Q. The time checks didn't pay anything. The time checks issued to the Grocer Co. for groceries didn't pay anything did they?

A. Well they were in the bank. I knew that didn't pay anything to issue time checks for groceries; I knew I was owing it just the same.

Q. When you were owing a debt do you mean to say that when you entered upon that statement the figures of the amount of your debt, that you didn't think about that debt?

A. I didn't think about what was in the bank, no sir I didn't.

Q. You didn't know anything about whether it was in the bank or not did you. Your dealing were with the Grocer Co.?

A. And they put the notes in the bank. I didn't know what they done with them. I didn't know what they did with them until afterwards. I supposed they was in there. I didn't know for sure. I didn't go and inquire.

Q. No one told you they were there did they?

A. I don't know as they did or but what they did. I couldn't put them in correctly because I didn't think about it.

Q. Didn't think about it when you were entering the amount of your indebtedness to the Grocer Co.; do you mean to say you didn't think how much it was?

208 A. I didn't put in the debts that were in the bank. I said I wasn't sure they were in the bank. I didn't know. I couldn't swear if I knew or somebody told me.

Q. You couldn't swear they were ever there could you?

A. I think they were. I was owing other debts on February 1st that I didn't put in this statement. I didn't put them in because I didn't suppose I had to put them in. Mr. Coffin knew that I was owing them. I know he knew because I told him. I told him when I got the property or whatever it was; whatever it was that I owed them outside of that I told him.

Q. Well if he knew all about it what did you suppose he wanted a statement from you for?

A. I didn't think so. I never had any such idea.

Q. You never had any idea that he wanted a statement from you?

A. That wasn't what you asked me at all. I did include in this statement of February 1st the amount I owed for labor. I stated that the amount I owed for labor was $822.59. I think that was true

as near as I could get at it at the time. I think now it is true as near as I could get at it.

Q. And as near as you have been able to get at it since do you think it was true?

A. I don't understand you exactly. I think that is a correct statement of what I owed for labor at that time as near as I could get at it. As near as I could get at it at that time.

Q. I din't ask you if it was as near as you could get at it at that time. I ask you if you now say that is a correct statement of what you then owed for labor. Answer yes or no?

A. I am telling you that is as near as I could get at it.

Q. When?

A. At that time.

Q. I didn't ask you that. I ask you as near as you can get at it now?

A. I don't know anything about it now.

Q. Were the bills that were owing you February 1, 1902, substantially the same as those that were owing to you on February 20, 1902?

A. I don't understand what you mean.

Q Your statement shows that as a part of your assets you had claims against different persons on February 1, 1902, amounting to $4,607.75. Was the amount of those claims about the same February 1st as they were on February 20th?

A. They wasn't as much February 20th. Some of these claims had been collected by me between February 1st and February 20th. I couldn't tell you what ones, or to what amount. I don't
209 know whether any of these claims had been collected by me between February 7th and February 20th, or not.

Q. Do you remember Mr. Lockwood was there on February 7th?

A. I don't know I am sure. Yes, he was there. I remember he looked at the books. I think he did ask me about each item that you owed. He asked me about each item of claim that I had against other persons. I don't know that he asked me item by item. In a general way he did. He might have taken down on a paper in my presence a list of my debts and a list of all the claims that were owing to me item by item, the names and amount. I think he did. He took down something. He got the information his own self off the books. He asked me about each item and I told him as near as I could. I guess he did put down the figures as I told him.

Q. And did you tell him at that time that the amount of the debts you owed outside of what you owed the bank was $1,359?

A. I don't remember what I told him. I don't remember that the amount was substantially that amount. I don't remember any such thing. I remember he was there but I don't remember the amount.

Q. And do you remember that you gave him figures and items of claims that you had against different parties amounting to over $4000?

A. I gave him some claims. I don't know how much they amounted to. I think I heard Mr. Lockwood's testimony. I re-

member that I gave him claims and that I told him the amounts. I don't remember what the amount of the claims that I had at that time was according to my statement.

Q. If you had recently collected any of these claims at that time you undoubtedly knew about it didn't you?

A. I should think I should, yes, sir. I hadn't collected any at that time.

Q. So you had claims at that time that were due amounting to over $4000?

A. Excuse me, what time do you mean?

Q. The time we are talking about when Mr. Lockwood was up there.

A. What day of the month was that. I don't remember the day of the month. It might have been the 7th of February. I wouldn't swear positively because I don't remember.

Q. So you had claims at that time that were due amounting to over $4000 had you?

A. I might have collected some before that and not remember it. I wouldn't swear if the amount of my claims at that time, book accounts, was about $4000. They probably were according to that. I don't know I am sure. I wouldn't say because I don't remember the figures. I don't know that I noticed the books at the time in particular. I didn't care anything about it. I remember of seeing Mr. Lockwood taking them down.

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Q. And so far as you did see you said he was taking them down correctly from the best information he could get?

A. The information wasn't very reliable because the books wasn't posted up.

Q. But that isn't an answer to my question, so far as you did see you said he was taking them down accurately from the best information he could get?

A. Yes, sir, as I said it wasn't very good. It is my recollection now that there was some substantial difference in the amount of those accounts that was owing to me between the 7th of February and the 20th. I don't know that I can name one claim that I collected between the 7th and 20th of February, 1902. I know I cannot because I don't remember the names.

Q. You don't know that you collected one of them during that time do you?

A. I don't know the date. I couldn't tell, sir. I couldn't tell nothing about it. I don't know if I did collect any between February 20th and March 29th. I don't remember it. I testified yesterday that I issued some time checks for supplies. I think that was correct. I think all the time checks that the bank held in February and March, 1902, that purported to be for labor were all for labor. I might have made some error but I don't know whether I did or not, if I did I didn't do it intentionally. As near as I know it is my best recollection that all were for labor which purport to be for labor.

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Q. You knew that the time checks that were for labor were a lien upon the logs upon which the labor was performed did you not?

A. Well I supposed all labor was a lien upon logs.

Plaintiff's counsel moves that the answer be stricken out as asking the witness to testify to a conclusion of law and as testified to plaintiff's counsel contend it is an erroneous conclusion of law.

The COURT: His statement I suppose will not be evidence of the fact as to whether or not the claims were lienable. The motion will be overruled.

The WITNESS: I think the time checks which I issued during the winter of 1901 and 1902 and including the spring of 1901 which were for labor, were issued for labor that was performed upon the logs and lumber in question. There may have been some of them that wasn't but I don't know. I could tell by seeing them. I certainly do remember that I had men employed that winter. I remember where they worked. They worked on those logs and lumber. It was the intention that they were given those time checks to represent the labor which they performed. I couldn't tell you the date that the camp broke. I couldn't tell you nothing about it. I think they quit work before March 29th, 1902, a long while before that. I am not positive. There might have been a few men
212 there but not many. They practically all left before the mill burned I think because the roads were getting bad and I reduced the crew down, how many I couldn't tell, Mr. Wickham. I had a man working for me by the name of Mr. Haskins. His first name was Henry. I know his son Ray. He worked for me some. I don't know whether he worked that winter or not. I am not sure. I don't think he did though. Previous to that he worked for me but not that winter I don't think, Mr. Wickham. I do not remember giving him a time check for labor and the bank refusing to pay it because he did not perform any labor. I have given him several time checks for labor. Speaking about the spring of 1902 I couldn't tell whether I gave him a time check for labor or not until I seen the time checks. I have no way of remembering. I presume I gave him a time check. I do not remember anything about giving him a time check for labor in the spring of 1902 or the summer of 1902 which the bank refused to pay because he had not performed any labor.

Q. Well I may be mistaken about the bank refusing to pay it or knowing anything about what it was for; do you remember giving him a time check for $100.00 and getting him to endorse it and taking the time check to Mr. Reagan and getting the money on it?

Plaintiff's counsel objects as incompetent, irrelevant and immaterial, not proper cross examination.

Objection overruled.

A. I don't know where he took it. I might have given him a time check. I didn't get the money on it that I know of. I don't remember it. Mr. Coffin first asked me to give a mortgage on the logs and lumber. He was the first one. No one else asked me. He did not ask me but once. I did not give it when he asked
213 me. The way I came to give it at all was because he told me—the first time that he asked me I refused—then when I came to the bank again he said he had a new proposition.

Q. I thought you said he didn't ask you but once; didn't you say he asked you but once?

A. Well he put it in a different way. He asked me twice. He was the only one that asked me to give the chattel mortgage.

Q. Do you remember that after the chattel mortgage was given that Mr. Coffin and also Mr. Lockwood talked with you about the fact that the upper logs had been put in on the same stream and marked in the same way as the Cadott logs were?

A. Might have been, yes, sir.

Q. Do you remember telling him for the first time in February, 1902, when he was up there at your camp about those upper logs?

A. I told him before. He knew it before. I don't know that I told him.

Defendant's counsel moves to strike out that part of the answer "He knew it before."

The COURT: Strike it out.

The WITNESS: I don't remember of telling him then at all. I don't know that I told him then anything about how they were marked. After the mortgage was given Mr. Lockwood and Mr. Coffin might have talked to me about those different lots of logs being marked the same way and put into the same stream. I don't know but they did I wouldn't swear positively, but think they did. They talked to me about the fact that William McKinnon who had
214 put in a large amount of the upper logs had recorded the mark in his own name in the lumber inspector's office at Chippewa Falls. They might have told me that the security and title of the logs was in a very unsatisfactory condition on that account. That was talked some between me and them. They appeared to be very much dissatisfied about that situation. I don't know what they said about its being necessary on account of that condition of affairs in order to protect myself and protect the bank and save my logs and not lose them that all the logs would be sold to some person who would buy them. I know they always wanted to be protected. I think they said that the only thing for me to do as a business proposition was to sell the entire lot of logs to one person. They told me a good many things. I didn't know that myself. I didn't know any such thing. I guess it was after they had this conversation with me that notice was posted foreclosing the mortgage on the logs.

Q. In order to preserve the logs and take the proper care of them was it necessary they should be driven as soon as the water was of sufficient height in the spring to drive them?

A. That is generally the case with all logs; they are driven when the water is proper. All logs that are to be driven generally are driven on the first favorable water in the spring. That is generally the way they do. I presume if any delay should occur or any accident should happen that they were not so driven it would mean considerable expense and loss to the owner of the logs if they didn't get them down. That fact was an important matter to look after in order to save the logs from being lost or from depreciating in value. I never drove

those logs. I think I testified yesterday that before I signed
215 the mortgage on the logs that Mr. Coffin told me that he would give me the logs to saw. They were all my logs until I gave the mortgage. I understand that the giving of a mortgage on logs takes the logs away from me or deprives me of the right to saw them if they foreclosed it. I suppose it would be just the same if labor liens were foreclosed. I don't know. I am no lawyer. I suppose if they put liens upon the logs and you give security you can go ahead. I presume in one case as much as the other. That is my idea about it. At that time I had no such idea of it at all. I don't know what idea I had at that time when I talked with Mr. Coffin. I know I had an idea that I wouldn't sign them at first and I didn't. I don't think there was anything said about selling the logs to anyone at the time that the mortgage was given. I don't remember of any such thing.

Q. Then how do you understand, if you do so understand, that the giving of the mortgage could in any way affect your rights to saw the logs?

A. It would effect it if they foreclosed them.

Q. Well how do you make any distinction Mr. Young or what cause was there for any such remark by Mr. Coffin at that time, the time of giving the mortgage about giving you the logs to saw when they were still your logs; what was it that led up to that or what was the occasion or cause of any such statement being made?

A. He was the cause of the statement being made. He led up to it himself. In the first conversation I didn't sign no contract at all. In the first conversation I don't think there was anything said to the effect that I should not saw the logs. I think I first talked with Mr. Clark about selling the logs to the Waters-Clark Lumber Co.
I am not positive about that. I do not remember exactly just
216 at this minute that it was Mr. Clark. I think it was in the bank that I had this conversation with Mr. Clark. I am not positive about that but I think it was. He asked me to sell them to the Waters-Clark Lumber Co. on certain conditions. He wanted me to sell the logs. He asked me to turn the logs over to the Waters-Clark Lumber Co. and that if I done so he would give me a chance of sawing the logs and that would prevent the creditors from jumping on the logs; that the chattel mortgages was no good. That is just what he told me. He did not tell me at that time what the Waters-Clark Lumber Co. would pay for the logs. I didn't talk with him about the amount at all, not in particular, not to him. I didn't tell Mr. Clark when I first talked to him about it whether I would sell them the logs or not. I didn't tell him, not for a long time afterwards.

Q. Had he talked with you at different times about buying the logs before you told him you would sell them to him?

A. He had asked me at different times yes to do certain things. At the time I sold the logs to the Waters-Clark Lumber Co., Mr. Clark didn't tell me he would give me the going price for sawing them. I did not testify yesterday that he did. It was long before that that Mr. Clark told me that he would give me the going price.

I couldn't tell you just what day, probably two or three weeks. I didn't have any conversation with Mr. Clark at the time I sold the logs about sawing them. No talk was had with him about sawing them at that time. I did not testify yesterday that I asked him to give me a contract and he told me that his word was good and that I then signed the bill of sale.

Q. If you did say it you were mistaken were you?

217 A. No sir I am not mistaken about that. My testimony now is that it was long before I signed the bill of sale that Mr. Clark told me that he would give me the job of sawing them. It was the calculation that they were to be sawed here at my mill at Eau Claire. What he said about that was that he would give me the going price.

Q. Was anything said as to how much the going price was at that time?

A. The same as the other mills charged. After the sale was made I had some other talk about what I should have for sawing them.

Q. And did that talk continue for a considerable length of time?

Plaintiff's counsel objects as incompetent, irrelevant and immaterial, not proper cross examination. Objection overruled.

A. I did say certain things to Mr. Clark and he said certain things to me. I said to Mr. Clark after the bill of sale was made that I wanted $3.50 a thousand for sawing the logs and I wanted all the lath and all the shingles and all the wood that would be obtained from the logs. I don't know that he said to me that if I got that there wouldn't be any lumber. I don't know that he did. I don't know any such thing. That was not the subject upon which we disagreed after the bill of sale, that Mr. Clark told me that if I got the lath and shingles and wood and $3.50 per thousand besides there would be nothing left for him. He never said any such thing. He wanted it all. I wanted my share.

Q. You wanted to sell it and keep it too?

Plaintiff's counsel objects as incompetent, irrelevant and immaterial. The court sustained the objection, to which ruling and decision the defendant duly excepted.

218 The WITNESS: I testified about some lumber that was shipped to E. M. Fish & Co.

Q. Was that lumber shipped to E. M. Fish & Co. for the purpose of paying a claim which they had against you for lumber and material they had furnished on your house.

Plaintiff's counsel objects as incompetent, irrelevant and immaterial, not proper cross examination?

The COURT: How do you think that is material Mr. Wickham?

Mr. WICKHAM: It is material in two ways, your Honor. It was taking property which was subject to the claims of the general creditors and putting it into property which he now claims is exempt. It is also material on the manner in which the witness has done business in taking property which had been sold to the Waters-Clark Lumber Co.

Mr. BUNDY: I object to the statement of the counsel and ask the court to rule that there is no such evidence in the case.

The COURT: I don't know that there is any such evidence.

Mr. WICKHAM: There is such evidence Y-ur Honor.

The COURT: I don't know what its relevancy is. The objection will be sustained, to which ruling and decision the defendant duly excepted.

The WITNESS: There was some of that lumber taken from one of the mills. It was taken from the Cadott mill. We tore the frame down. It was some of the boards that were cut. I couldn't tell you just how much was taken from the mill. It is not a fact that that car of lumber consisted of 6,000 feet of No. 4 boards and 7500
219 lath and 6752 feet of No. 2 dimension and that every foot of it was new lumber. It was all old lumber. We took and sawed the nail holes off. When it was in the mill of course there was only nail holes in each end of a board. We didn't saw off the middle nail holes. We pulled those nails out. It was nice good lumber. It was not substantially all old lumber that had been in the mill. There was some that had been thrown out now and then when shipping lumber. Not all of it was old lumber. The car load of lumber which I shipped to E. M. Fish was shipped from Cadott to Eau Claire on the Wisconsin Central Railroad about the 25th day of March, 1902 I think. It was shipped in the name of A. Adams. I was not there at the time it was shipped. I did not see it loaded into the car. I did not see it after it was loaded.

Q. Why was that particular car of lumber shipped in the name of Mr. Adams?

A. Well we lots of times shipped lumber in that way for other parties. I don't know whether I ever shipped a car load of lumber in the name of Mr. Adams. I think there was some shipped to Minneapolis that way. I am not positive about that but there was lots of people we sold lumber to requested that it be shipped in their name, shipped in the name of the person to whom it was sent. I don't know as there was ever any car of lumber shipped in the name of Mr. Adams. I don't remember. I know that car was. I think I told him to have it shipped in his own name. I am not positive about that. I wasn't there at the time it was shipped. I don't know that I shipped lumber, lath and shingles to several different parties, that I had on hand there at Cadott in the latter part of January and in February before February 20th. I shipped some
220 but I couldn't tell you the dates. I could not tell you the amount. I probably shipped shingles to the Northwestern Lumber Co. I don't know how many car loads. In some car loads you can get 150,000, in some 140,000 and down to 100,000, according to the size of the car. Some you can get more in. It is generally about 125,000 to the car. I should think that would be about the usual size car but I wouldn't be positive. I think I shipped some car loads of lumber to the John Spry Lumber Company of chicago. I couldn't tell you what date though. I do not remember how many car loads. Probably there were three of four. I couldn't say Mr. Wickham. I also shipped some prior to the giving of the mortgage,

several car loads of lumber to the North Western Lumber Co. I probably shipped some to the B. M. Goodwiddie of Chicago. I don't remember the name Mr. Wickham. I cannot remember that I shipped some to Lewis Hudt of Chicago. I probably did though. I shipped lath to the Northwestern Lumber Co. I think that I remember that prior to the giving of the mortgage, of shipping to C. H. Mears & Company of Chicago some pine lumber and some lath too in the month of February. I don't remember a couple of days after signing that mortgage on the 22nd of February of shipping to Lewis Hudt of Chicago a car load of pine lumber. I couldn't remember the date. I don't remember that I did after giving the mortgage. I don't know whether I did or not. I do not remember what time I shipped it, don't know anything about it. I don't remember that on March 6th I shipped a car load of pine lumber to C. H. Mears & Co. of Chicago. I don't remember about the date at all. I couldn't say that I remember it was about that time. I shipped some lumber to him that he had bought. I remember of
221 shipping a car load of lath to C. H. Mears & Co. I know he had some lath there and I loaded it up for him. I probably shipped a car load of lath and lumber to W. J. Maxwell on the 18th of April. I don't remember though. I remember of shipping shingles and lath to the Northwestern Lumber Co. in April. I don't know what date it was. I remember of shipping a car load of lumber to myself at Eau Claire on the 24th day of April. I shipped quite a little lumber to myself.

Mr. BUNDY: He calls your attention to the 24th of April.

A. I don't remember the date at all. It must have been about that time. I couldn't say positively what time it was but I shipped the lumber all the same. I have no other place than Cadott to ship lumber from. All the shingles and the lath were shipped from Cadott. I cannot give any idea of the amount of lumber, lath and shingles that I shipped from Cadott after February 1st 1902. I cannot approximate it. I wouldn't undertake to guess. I don't know. I received pay for the lumber shipped to C. H. Mears & Co. of Chicago. I couldn't tell you the dates that I received pay for the lumber shipped C. H. Mears & Co. of Chicago and Lewis Hudt of Chicago. I remember I received pay after the lumber was shipped. I got the money. I could not tell you how long after the lumber was shipped it was that I got the money. I couldn't tell you about how long because I don't know. Some of it I got in ten days and I suppose some of it went longer. Sometimes they discounted their bills and then again they didn't. It was not likely that I ever got any pay before it was shipped, only on one account. That was some lumber that was left there at the depot, some bass wood lum-
222 ber that was piled up there that I sold to Mr. Mears. I couldn't tell you just what time I got pay for that. I got it some time. I got the money for some of that lumber before it was shipped. I think I got some of the money for the lumber after it was shipped. I must have if I got it all. I know I got the money but I cannot tell just exactly how it was. I know I got the money. That was not part of the lumber that I saw Mr. Sires scale there

when he went up there for the Waters-Clark Lumber Co. I think it was all piled together. He did not scale the entire amount. He did not scale that that belonged to Mr. Mears. I know that because I know he didn't. Mr. Mears' name was on the pile and he never scaled it. I put Mr. Mears' name on the pile when he bought the lumber in January or February, first part of February, somewhere along there.

Q. But it was there and part of the lumber that was there piled in the yard?

A. It wasn't in the yard at all, sir.

Q. Well whatever you call it, wherever the lumber was piled?

A. No sir that lumber was piled by itself in another place. It was not in the lumber yard proper. I call the lumber yard proper where the most of the lumber was. This was piled at the depot, right along side of the track. There was some other lumber piled near it but not very much. It was probably 60 rods, 50 or 60 rods or more from the other lumber. I never measured the distance. I don't know. All the lumber I had there was piled in several different piles. It was scattered considerably. We couldn't pile it at all in one pile. It was scattered in the yard more than anywhere else, different piles. It was all piled up but in different piles. I knew that the chattel mortgage covered all the lumber that was in the chattel mortgage. I didn't understand that it covered
223 anything that I didn't own.

Q. You knew that it covered all the lumber that you had in Cadott didn't you?

A. Yes all that I owned. In the month of May 1902 I shipped shingles to the L. H. Weber Co. at Menominee and also to same company at Downsville. It was for the Knapp Stout Co. That is Mr. Wilson of the Knapp Stout, Lumber Co. was interested in the Weber Lumber Co. I shipped it to the L. H. Weber Lumber Co. at those places at the suggestion of Mr. Wilson, through Mr. Wilson's directions. All this lath and lumber and shingles that I have testified about I received the proceeds of. On February 1st, 1902 I was owing Swift & Company. I don't remember why I did not include it in my statement of February 1st to the Eau Claire National Bank. I did not happen to get hold of it at the time probably. I think there was some dispute on that at the time. I am not sure about it but I know there was some dispute on the debt. I claimed not to owe it and I found out afterwards that I did owe it. I was owing W. J. Davis on February 1st. Probably I didn't put that in my statement because I didn't have his. I didn't have it posted up consequently I missed it. I presume I didn't think about it at the time. I didn't think about it. Didn't have it posted up. I owed Eugene Martin. I didn't put that indebtedness in my statement to the bank because I didn't think about it. I omitted it in some way. I owed J. M. Vingenda. I didn't put his name in the list of indebtedness because I didn't have his account. I knew I owed him some but I didn't know how much I didn't say so in my statement because I didn't have to say so. I couldn't tell. I just merely took

the amount that I had against people that I was requested to.

224 Q. I am speaking about the amounts that people had against you?

A. Well that is what I mean. I knew he had an account against me. I supposed he did but I didn't know how much it was. I never had a settlement with him. I didn't find out how much it was and put it in my statement and make my statement correct because I didn't think about it. That was the reason. I was owing F. H. Monroe at that time. I guess they had a claim for some provisions and I owed them for time checks. Provisions and time checks are two different things. The indebtedness I owed to Monroe and to the bank at Cadott wasn't all the same one no sir. I owed Monroe some debts besides the matter of time checks. I think I owed that on February 1st. I don't remember why I didn't put that in my statement. If I had thought of it I would have put it in but I didn't do it. I owed the Phœnix Manufacturing Company on February 1st. I didn't put that in my statement because I didn't know how much it was.

Q. Why didn't you find out?

A. Well I was up to Cadott and I don't know that I ever had a statement of them. I might have had. I presume I had statements from all my creditors but I missed it. Usually business men send regular statements, usually monthly. They might have kept me posted right along as to what I was owing each one of them. I omitted it, not intentionally sir at all. I don't know that I had the information right at hand to put it in correctly if I had wanted to. I was owing Henry Frazell on February 1st. He lives in Cadott. I didn't put that in my statement of debts because I don't think I had his statement at that time. I had part of it I guess. I am not sure about that. In fact I overlooked it. I had been owing

225 a portion of that for a long time. I don't think I ever put it in any of my statements that I sent the bank. I never put those debts in my statements of my financial condition that I gave the bank. I never thought about it. I was owing Aleck Lynch on February 1st. I didn't put that in my statement to the bank; I didn't know how much it was. I couldn't find out all of those in a day's time. I didn't have over a year to find that out. It had run quite awhile. If I had wanted to I could have found time to find out about that. I didn't find it out a dozen times during that time. I never found it out until that time, until the time I gave that. I didn't think it was necessary to find it out. He done work for me. It was an account between both of us. I guess I was owing A. A. Cutter on February 1st. I didn't include it in my statement; I missed it in some way. I had bills of it I think every month from November 1st; I think I did. I was owing Peter Dietzler at that time. I didn't include that in my statement to the bank. I don't think I had it at the time. When I testified on my direct examination that on February 20th I was owing the Standard Oil Company $38.50 that might have been a mistake. I could:.'t say (Paper shown witness).

Q. I will show you your bankruptcy schedule; that is a debt you contracted in April and May 1902 isn't it?

A. It might have been yes.

Q. You see it was don't you?

A. I might have made a mistake about that. I wouldn't say that I didn't. I don't think I got anything of them in April and May, 1902. The item in my schedule in bankruptcy from which I gave evidence of the debts I owed as follows: "Standard Oil Company dealers in oil, Milwaukee, amount $38.50" and the time when
226 the debt was contracted "April and May 1902" must have been an error because I didn't get any in April. I gues- the April isn't dittoed. I don't think I got any in May. That is what it reads but I couldn't swear positively to that but I don't think I got any of that as late as that. It must be an error. In this statement I sent to the bank of February 1st when I gave a list of a large number of claims I had against different parties and in which I specified that they had claims against me and I was owing them I didn't give the correct information to the bank when I made out that statement because I hadn't settled up with them and I couldn't. I told Mr. Coffin at the time that I hadn't had settlements with them that that was what I had on my books against them. I did not go over this list in detail with Mr. Coffin. I told Mr. Coffin the list was as correct as I could give it to him at that time. I don't think I ever pointed out any of them and said they were not correct. I don't know that I did not do so. I don't know I am sure. There are a large number of pencil marks on there. I put those pencil marks on since this trial has commenced. Those pencil marks are no part of the original list and no part of the list as I made it out and gave it to Mr. Coffin. There were no pencil marks on them. After some of the names appears "B" that means bad now. In some places is the letter "G" and in some places the word "good." In one respect that indicates those that were bad on February 1st 1902 and those that were good on February 1st 1902. Some of the claims were totally worthless and others were bad because they had claims against me. It might be that I have marked a great many "B" and that I have named three of them that I thought might not be col-
227 lectable because of the insolvency of the parties. I don't know just how many.

Q. I don't want to take the time to go over them in detail but the condition as given here was the condition of the account as it existed on February 1st was it?

A. That is the time that I made it out yes sir. I don't know whether the explanation I have given here on the stand shows what they should have been on Feb. 1st or not. I don't know whether that is so or not. I wouldn't want to say that is so so far as I know. I think I could point out some particular item where the account stood differently on February 1st than it did on February 20th. I could tell what claim if any I collected between Feb. 1st and Feb. 20th if I could look at my books. I couldn't tell positively without. In the statement of February 1st I put in two teams because I had barg ined for one with a fellow that was working for me. I hadn't paid him

for it and when we broke up in the spring I paid him for the work he had done with the team. I didn't think it was material to put down only one team or two teams and then put in what I owed for the other one. I didn't think it was necessary. I never thought anything about it. That is the sum and substance of it. I thought about making the statement accurately as near as I could. I did make it as accurate as I could so far as I knew. That is the only explanation I can make of it. I think it is a good explanation. I made out the statement the best I could under the circumstances. I know a man by the name of Cook of Cadott. There are half a dozen Cooks there. I know what "Y. O." logs mean. The "Y. O." logs were a mark of logs that I put in during the winter of 1901 and 1902. I obtained some of those logs from Mr. Cook and he got his pay as I understand it. I don't know that I know anything
228 about his cutting some of those logs. I don't know anything about it definitely. I know there was a few feet of his logs hauled at the depot that I bought of him during the winter and he was paid for them and the rest was left on skids. The roads had given out what has been done with the logs since then I don't know. I presume that he has got them, taken them back. I don't know a thing about when he took them back. I didn't say in my direct examination that in building my mill at Eau Claire I expected to saw lumber here and that I knew I could get an extension of my contract for stumpage from Mr. Irvine. I said I thought I could. I didn't say I knew I could. I had always got an extension and I presumed he would give me a further extension. I know of no reason why he wouldn't give me an extension unless it was that he disposed of all the land. That is the only reason I think. I don't think he would have refused me. I had paid for the stumpage. I had no doubt but what he would give me an extension if I had wanted it. I don't know that he would. He might have. I think he sold the land the next spring. I did not intend when I was building my mill to saw the stumpage I had left here in Eau Claire. I didn't say that it was my intention to do so in my direct examination. Besides purchasing stumpage from the Chippewa Lumber & Boom Company while I was operating at Cadott I purchased stumpage from a number of people. I bought some of the Laird-Norton people, down stuff, windfalls. I bought lots of logs of different parties, farmers. I don't know how much stumpage I did buy of Laird-Norton. I think I have a document here that will tell pretty near what that was (Paper handed counsel). That is the pine on 11 forties. I never purchased any stumpage from Laird-Norton except those 11 forties. I purchased logs from different per-
229 sons. I don't think I ever purchased any stumpage of anybody else unless it was a man by the name of Thayer. I did purchase some from him. I couldn't tell you how much. I couldn't say in round numbers because I don't know. It was not such a large number of forties. I paid him so much for the timber on some land, stumpage land. I paid him so much a thousand for the logs. I have forgotten just the circumstances as to how it was. I couldn't tell you on how many different forties altogether I owned the stump-

age during the entire time I was at Cadott. I couldn't tell you anything about it. I purchased from the Chippewa Lumber & Boom Co., Laird-Norton, this Mr. Thayer and I think that is all. I am not sure about that. During the last three or four years there has been some rise in the value of good standing stumpage. In the last year there has been a great rise in the value of second choppings. In the last year it raised more than any other time. This down stuff hasn't raised more each year for two or three years before that than it raised before that time. So far as I can remember the value of such second choppings has only been rising in value very much within the last year. Previous to that it hadn't changed very much that I know of. Of course I haven't been dealing in any choppings outside of the ones I was interested in. Some of the lower grades of lumber has raised in price, especially No. 4 boards, but only within the last two years I think. There was a scarcity of them and I suppose they used more poor boards. Poor timber makes poor lumber and good timber makes good lumber. When lumber rises in value the value of standing timber would rise more than the others. I don't say that the timber from which the lumber was made
230 would rise in value whether it was standing or windfall. I don't know but what if the lumber rises in value that the timber from which it is made would rise in value also.

Q. And when lumber rises in value there is more of a margin that would be left to a person logging to justify him in incurring the expense of hauling poorer timber, is there not?

A. That would depend upon what condition it was in when you got it out. If you get down timber out when the snow is deep it would be very expensive.

Q. I say when lumber rises in value and there is more of a margin that would be left to the person logging to justify him in incurring the expense of hauling poorer timber is there not?

A. That would be according to what kind of a winter it was to put it in. It is a good deal more expensive to log poor timber than good timber. If when I got it out I couldn't sell my lumber for enough to pay my expenses then I wouldn't make any money. If lumber rose in value whatever it rose would be so much profit. I said I trespassed on some Land of Laird-Norton & Co. I paid a portion of the trespass by deeding some lands to them. The logs that I cut from the lands upon which I trespassed were a portion of the logs sold to the Waters-Clark Lumber Co. The amount that I still owed for the trespass was $150.00. I don't know as that $150.00 has ever been paid or not. I gave them a time check and I presume that the Eau Claire National Bank paid it. I never heard anything of it since I gave a time check stating that it was for logs. I supposed that a time check was given for a man's wages for the time he worked. That is where the time comes in. It is the time that a man works for wages. I called that check that was given for those logs
231 a time check for logs, $150.00, balance due on those logs. I never paid that. The time checks that I issued were drawn on myself.

Q. In March 1902 when you paid Mr. Monroe did you think it was unfair to the other creditors to pay him $1600.00?

A. I didn't think anything about it. I went and paid it.

Q. Did you think at that time you would be able to pay your other creditors in full?

A. It was my intention. I don't know whether I thought I would be able to pay my other creditors in full at that time or not. I thought if I could get the logs, saw the logs I could pay them. It was my calculation at that time that I could saw the logs. I hadn't thought at that time whether I had sufficient property at a fair valuation to pay all my debts. I would do it as fast as I could. I had no intention at that time to sell all my property and convert it into money. At the time I made this payment to Mr. Monroe I hadn't thought anything about whether my property at a fair valuation was sufficient to pay all my debts on March 12th. That hadn't come into my mind up to that time. My idea was to pay everybody. I had made several estimates of my property and my debts before that. At all times up to and including the time I paid Mr. Monroe I never thought anything about whether I had property which at a fair valuation was sufficient to pay all my debts and have a considerable margin left. I may have thought about it the best that I could at the time when I made my financial statements. Up to the 1st of May 1902 I never thought about whether my property at a fair valuation was sufficient to pay all my debts. I hadn't thought anything about it. My object was to pay all my debts if I could. I didn't think at all about whether I had property enough to do so or not.

232 That hadn't run in my mind. In my mill at Eau Claire I had certain machinery. I don't remember when I commenced putting it in. Some of it was put in the fall before and I am not sure whether some of it was put in during the winter or not, some was put in in the spring. I had some men there for two or three months in the fall to work there. I never put any engines in there, I put in boilers. They were there but they were not set up until the spring. There was an engine there but I didn't set it up. There was also a fly wheel. I don't know just what there was there. There was lots of pulleys there. I couldn't enumerate everything that there was there unless I went down and looked. There was a heater, smoke stack and breeching, shafting and a trimmer and edger. Not all of the shafting was in position, most of it. The lath mill was there. All of the machinery is not in place but it is there. There is a logging carriage. I have the husk and arbor of a rotary saw but no saw. I have the saw ready to put on. I have a friction there and an edger complete with rollers and a trimmer and lath mill and packing boxes for shingles. There is no shingle mill there. I didn't have any. It burned up. So far as the lumber mill part is concerned it is pretty well along. It wouldn't have taken but a short time to fix that. There is some machinery I would have to get, different things. I don't know just what they would be. I did not intend to saw many shingles at the mill at Eau Claire, only just out of the slabs and stuff. I intended to buy my shingle machinery. I didn't at any time have shingle machinery for two mills, only one. Once I sawed lumber in the Paint Creek Mill and shingles in the other mill.

Q. Mr. Young did you use a portion of the money that you
233 received from the sale of lumber, lath and shingles for the purpose of paying expenses and supplies in connection with your logging and lumbering operations?

A. No sir I might have paid a few people but not very many. I think I did a few. I didn't put down in my pocket all the proceeds of lumber, lath and shingles from the time I went to Cadott. I used it to fix up this mill down here. I didn't commence work on my mill in Eau Claire from the time I went to Cadott several years ago. I didn't say I commenced work on it then.

Redirect examination.

Examined by Mr. BUNDY:

I used the money which I took in during the time I lived at Cadott for lath, lumber and shingles in my business.

Mr. BUNDY: Now before I can very intelligently examine Mr. Young on redirect examination I want a stipulation or something to the effect that the time checks held by the Eau Claire National Bank on February 20th 1902 are those bearing the bank's serial number, endorsed on the back of them, up to and including 47,641; that is right is it?

Mr. WICKHAM: That is right is it Mr. Lockwood?

Mr. LOCKWOOD: Yes.

Mr. BUNDY: That is all bank numbers less than on the time checks produced in court are those held in that bank on February 20th, 1902?

Mr. LOCKWOOD: That is correct.

Mr. WICKHAM: All right.

It was also conceded by the respective parties that all time
234 checks produced in court bearing the bank's serial number or any number between 47,641 and 47,922 were the time checks purchased by the bank between February 20th 1902 and March 29th 1902 and which they had on hand at that latter date.

Mr. BUNDY: It is conceded too is it that the time checks in court about which I am questioning Mr. Young are produced by the bank and were held by the bank at the dates mentioned?

Mr. WICKHAM: They are produced by the Waters-Clark Lumber Co.

(The WITNESS continued:) Time check No. 622 payable to Anthony McGuire for $4.00 bearing the bank number 47,628 was for labor in the shingle mill. He was making shingles in my mill at Cadott. Order No. 654 issued to Hans Oleson for $3.50 bearing the bank number 47,625 is for labor in the shingle mill at Cadott. Order No. 656 payable to Theodore Fultz for $32.50 bearing the bank number 47,604 was for shingles that I bought of him. He was not working for me or employed by me. He owns a mill there. It was the purchase price of shingles. Time check No. 638 issued to Ole Johnson for $15.00 bearing the bank number 47,575 really ought to be in there for work in the shingle mill because that is where he worked but I put it down in a different way by mistake in

some way or other. It was for labor in the shingle mill at Cadott. Time check No. 616 issued to Swift & Co. for $60.35 bearing the bank number 47,555 was for supplies, meat and stuff purchased by me. That check was not issued for labor of any kind. Time check No. 615 payable to Drummond Bros. for $25.11 bearing the bank number 47,518 was issued for supplies, beef and pork and
235 such things as that. It does not represent labor of any kind. Time check No. 582 issued to L. Arckwright for $10.00 bearing the bank number 47,485 was for right of way through his land to pay him for right of way for logging road thought his land. Time order No. 610 issued to J. E. Reagan for $25.00 and bearing the bank number 47,478 was issued to him on account. I don't know but what I borrowed $25.00 from him. It may be merchandise in camp Mr. Reagan was not working for me at any time. That check was not issued for labor of any kind. Time check No. 589 issued to W. J. Davis for $105.50 bearing the bank number 47,463 was issued for feed. It does not represent labor of any kind. It was the purchase price of feed. Time check No. 595 issued to Ed. Hadley for $20.00 bearing the bank number 47,457 was issued for labor in the shingle mill for me. Time check No. 581 issued to Eugene Voss for $27.86 bearing the bank number 47,409 was issued for hauling lath and shingles into town. It was not work on logs or lumber I don't think. He might have hauled some lumber, I don't know. It says the time check is issued for lath and shingles. It must be that unless I made a mistake. Time check No. 575 issued to William Craig for $5.00 the bank serial number being 47,389 I don't know as I can explain that to you. I think that man got hurt and we took up a contribution for him and I gave that much to him. It appears on the face of it to be issued for $5.00 on accident. That is the way it was. He got hurt in some way and I took up a collection for him. Time check No. 572 issued to William Graves for $7.00 — the bank number 47,387 was issued for labor. That doesn't want to be in here. It was for labor on the logs. Time check No. 562 issued to Drummond Bros. for $72.01 bearing the bank number 47,357 was issued for supplies. It was not for labor of any kind on my logs. Time check No. 573 issued to
236 J. E. Reagan for $50.00 the bank serial number being 47,386 must be for supplies. Mr. Reagan was not at any time employed by me in any capacity either hauling, driving cutting or manufacturing lumber, logs or shingles. Time check No. 570 issued to Ole Johnson for $15.00 bearing the bank number 47,388 I don't know about that. Ole Johnson worked in the shingle mill but he didn't work all the time. We didn't run all the time and what other time I don't know just where he worked. I had him working around the mill somewhere. He didn't work in the woods.

Mr. BUNDY: We will take that out.

(The WITNESS continued:) Time check No. 558 issued to Swift & Co. for $38.25 bank number being 47,295 was issued for supplies. Swift & Co. did not work for me. That time check does not represent labor of any kind. Time check No. 545 issued to Abel Sellers for $31.66 bank number being 47,254 was issued for logs that I

bought of them up river. He was one of the contractors on the up river logs. I didn't hire him, I bought the logs of him. He delivered them to me at so much a thousand. This check represents the purchase price of the logs. Time check No. 541 issued to James Polley for $62.00 the bank number being 47,450 I think was issued to Mr. Polley for putting in those logs for Mr. McKinnon. Haskins sent me an order for that amount and authorized me to pay him. Those were the up river logs. The logs furnished by Mr. Sellers were up river logs. James Polley was not employed by me either by the day or month or in any way. I suppose that is for wages for Mr. McKinnon. Mr. McKinnon hired Mr. Polley to put them in. Time check No. 539 issued to Frank Zimmerman for $66.74 bank number being 47,225 was issued for feed. Mr. Zimmerman
was not employed by me or on my logs at all. Time order
237 No. 532 issued to E. L. Tiffany for $12.00 the bank number
being 47,221 that was issued for right of way through his land. Mr. Tiffany was not employed by me at all and that time check was not for any labor performed by him on my logs. Time check No. 477 issued to Peter Deitzler for $50.00, bearing the bank number 47,424 was issued for planing lumber. Mr. Deitxler was not employed by me or on my lumber as a laborer for wages. He operated his own mill. And this is what he charged me for planing my lumber in his mill. This was some lumber that was shipped and sold by me at or about the date the time check was given on December 31st, 1901. Now with reference to Mr Tiffany I think I only paid him $10.00. This seems to be something else, some work that he did. He was employed by me at one time in hauling logs. Time check No. 493 issued to Drummond Bros. for $39.95, bearing the bank number 47,151 was issued for merchandise. Drummond Bros. did not work for me on my logs and that time check does not represent labor of any kind. Time check No. 499 issued to Swift & Co. for $44.93 and bearing the bank number 47,052 was issued for merchandise. It does not represent labor on logs. Time check No. 480 issued to The Dells Milling Co. for $75.00 bank number No. 46,993 was issued for feed. It does not represent labor of any kind on any logs I owned or on lumber, lath or shingles. Time check No. 504 issued to J. E. Reagan for $100.00 bearing the bank number 47,079 was issued for merchandise. It does not represent labor of any kind. Time order No. 487 issued to J. E. Reagan for $259.71, bank number 47976 was issued for sundry orders to the men whose names are on the back of the check. I think those men had
some accounts there or something at Reagan's. It might have
238 been a lot of time checks and we paid them all in one. I
don't know which it was. I wouldn't swear to that. These men might have had time checks in there and I wrote out time checks covering the whole of it. I recollect what was done in regard to that transaction but I don't know whether that is what I owed him or not? Mr. Reagan did not work for me at any time on the logs and that time check does not represent any labor that Mr. Reagan performed for me. Time Order No. 505, $95, J. F. Reagan bank number 47,080 was issued to the men whose names appear on the back of

it. I think those men owed him. These men worked for me and owed Mr. Reagan and I paid them by giving Mr. Reagan a time check. Time check No. 461 issued to the Dells Milling Co. for $50.00 bearing the bank number 46,716 was issued for feed. It does not represent any work done on my logs, lath lumber or shingles. Time order No. 626 issued to Mathias & Oleson for $90.17, bank number 47520 I cannot explain fully. Time order 614 issued to Peter Deitzler for $100.00 bank number 47,491 was issued for planing lumber at so much per thousand. Mr. Deitzler was not employed by me for wages or in no way except for planing lumber. The work done by Mr. Deitzler was on lumber shipped by me about January 31st, 1902, and before. Time order No. 620 issued to William Abel for $95.10, bank number 47,517 was issued for hauling logs, for hauling the Cadott logs. Time order No. 544 to William Downer, $33.15, bank number 47,255 was issued for some of those up river logs. Downer was not employed by me for wages by the month or day or hauling by the thousand. It was for purchase of logs up there if that is the name. I am not certain about that. Time order No. 622 to George Downer for $81.32, bank number 47,519 was issued for putting in logs there and I made an error in
239 making the time check. That does not represent labor by him in hauling my logs. It represents the purchase price of logs, up river logs.

Plaintiff concedes that with the exception of the time checks about which Mr. Young has testified that the other time checks held by the bank on February 20th, 1902, were given for purposes for which a lien could be claimed and for which if proper steps had been taken a lien would have been given. Plaintiffs do not admit that they are entitled to deduct them but do admit that the time checks other than those called to Mr. Young's attention were issued for labor for which a labor lien might have been had if proper steps and proceedings had been taken in time.

(Witness continued:) Time order No. 706 issued to Henry Goetz, Jr., town treasurer of the town of Seymore for $32.01 bank number 47,713 was for taxes on the mill and lumber piled at mill. That order does not represent labor of any kind. Time order No. 707 issued to The Village of Cadott for $68.05, bank number 47,741 was for taxes. Time order No. 716 issued to Swift & Co. for $28.68, bank number 47,749 was for beef. It did not represent labor of any kind on my lumber, lath logs or shingles. Time order No. 724 issued to Abel Sellers for $95.71, bank number 47,462 was issued for hauling logs up the river. Mr. Sellers did not work for me and was not employed by me by the month or day thousand. That order represents the purchase price of logs purchased by me of Mr. Sellers. It ought not to be for hauling logs. I don't know what that means. I have made a mistake somewhere. It was one of the monthly payments made on logs that I bought of Mr. Sellers. He fur-
240 nished the sumpage and logs and delivered them to me at so much per thousand. Time order No. 753 issued to C. W. Cheney & Co. for $82.50, bank number 47,868 was issued for feed. It does not represent labor of any kind. Time order No. 632 issued

to Frank Zimmerman for $100.00, bank number 47,869 was issued for feed furnished to men hauling logs. It does not represent labor of any kind. Mr. Zimmerman was not employed by me in any capacity for wages.

Plaintiff's counsel make the same admission as to time checks held by the bank on March 29th and procured by it in some way between February 20th and that time.

Defendant's counsel admit that all of the time orders about which plaintiff's counsel has asked Mr. Young and contained in packages as well as all other time orders held by the bank on Feb. 20th and March 29th, 1902, contain the stamp mark of the bank showing them to have been paid on June 7th, 1902.

(WITNESS continues:) Time order No. 801 dated April 30th, 1902, issued to H. Kilpatrick for $2.23, bank number 48,373 was issued for work loading lumber that came down to Eau Claire. It was for loading lumber that was transferred by me to the Waters-Clark Lumber Co. The time check is signed by me. It contains the stamp of the Eau Claire National Bank "Paid June 7th, 1902."

Said time check offered and received in evidence.

(WITNESS continued:) Time check No. 796 dated April 30th, 1902, issued to Gus Waldoski for $28.12 signed by me bearing the bank number 48,361 was issued for work on the lumber that
241 was shipped down here. It was the same lumber that was transferred by me to the Waters-Clark Lumber Co. on March 3rd, 1902. It also contains the stamp of the Eau Claire National Bank indicating that it was paid June 7th, 1902. Time check No. 795 dated April 30th, 1902, issued to A. Adams for $30.00, bank number 48,306 purporting to be issued for 17½ days' work in lumber yard at $1.75 signed by me and containing the stamp mark of the Eau Claire National Bank indicating it was paid on June 7th, 1902, was issued for work in the lumber yard. He was loading this lumber that came down to Eau Claire that was transferred to the Waters-Clark Lumber Co. by me. Time order No. 797 dated April 30th, 1902, issued to Frank Craig for $11.23 signed by me, the bank number being 48,344 purporting to be issued for 4½ days' work in the lumber yard and bearing the stamp mark of the bank showing it was paid on June 7th, 1902, was issued for the same purpose as the other and on the same lumber. Time order No. 798 dated April 30th, 1902, issued to Roy Craig for $18.00 signed by me, bank No. 48,343 purporting to be issued for 12 days' work in lumber yard and bearing the same stamp mark of the bank as paid was issued for the same purpose and on the same lumber. Time order No. 800 dated April 30th 1902 for $37.50 issued to William Cook signed by me bearing the stamp of the Eau Claire National Bank as paid June 7th 1902, the bank number being 48,342 purporting to be issued for 15 days' work in the yard with team was issued for the same purpose and on the same lumber. It was issued for the lumber transferred by me to the Waters Clark Lumber Co. Time order No. 802 dated April 30th 1902 signed by John H. Young issued to Elmer Osborn for $28.25 bearing the bank number 48,341 contain-

ing also the stamp of the Eau Claire National Bank paid on
242 June 7th 1902 was issued for the same purpose and on the same lumber. I do not know the names of the various jobbers of McKinnon. I had a contract with McKinnon. It was just for the sale of logs, so much a thousand banked on the river or put in the river rather. Under my contract Mr. McKinnon would issue his own time orders I suppose or Mr. Haskins would issue them for him. Mr. Haskins was the scaler. He would sign Mr. McKinnon's name to them. I think that is the way he did it. I have forgotten just the way that is.

Q. I want to call your attention to statements which you furnished the Eau Claire National Bank during the summer and winter of 1901 beginning with defendant's exhibit 1. In whose handwriting is that?

A. Mr. Coffin's. That statement was made in the bank. I don't know how long prior to that time if any Mr. Coffin had been asking me to make statements, how long prior to the time I actually made it. Before making the statement I didn't go and make any investigation I made it at the time.

Q. I think you said that the mill at Cadott was put in at $4,000 but it was not clear. You testified on your direct examination that it was not quite clear. Did you mean by that that there was a mortgage on that mill?

A. Well the land I had on contract.

Q. No but the mill?

A. There was no mortgage on the mill but I owed for some of the machinery. In that item on that statement of 1,000,000 lath and 200,000 shingles and lumber 8 or 10,000,000 feet there was no price put on that 10,000,000 feet of timber in that statement. It is just timber 8 or 10,000,000. I guess that is the way Mr. Coffin wrote it.

243 Q. Does that purport to be the result of the scale or an estimate?

A. Just a rough estimate or guess; that is all. It is merely a guess that I wasn't certain about it.

Q. I show you defendant's exhibit No. 2 which says "Timber 4,000,000 at $3.00" isn't it?

A. Yes sir.

Q. Hard wood timber 100,000 at $4.00?

A. Yes. That was just those choppings. I didn't own the land. I didn't at any time since I went to Cadott own any standing timber land. I didn't own any land on which timber was situated except the 40 acres the mill was on. As to the amount of timber that I thought was on that land or that was on that land I just merely made a guess at. That was all. That particular part of the statement is also in the hand writing of Mr. Coffin. That was made in the bank: Mr. Coffin did the writing and I furnished the information. I did not furnish it from any books or memoranda that I had in my pocket. I just told him what I thought it was. I carried the stumpage in that statement at $3.00 per thousand and the

pine timber at $10.00 per thousand. I believe that was dated February 25th 1901.

Q. I call your attention to defendant's exhibit 4 dated July 5th 1901 That purports to be or a portion of it in your hand writing, all except the blue ink isn't it?

A. Yes sir. I carried the lumber in that statement at $10.00 a thousand. The timber and stumpage was carried at $3.00 at that time and the hard wood at $5.00. As to information given to Mr. Coffin by me at the time I furnished these various statements and that one in particular and others I told him it was just merely a guess. I had never measured the amount of lumber and the amount of timber I had.

244 Q. I call your attention to defendant's exhibit No. 5 in which is 4,000,000 pine at $2.50 isn't it?

A. Yes sir. That was pine stumpage I suppose. I think the lumber was carried in all these statements at the same price $10.00 per thousand. I don't know.

Q. I call your attention to defendant's exhibit 6 and ask you if the lumber is carried at the same price there, pine lumber at $10.00 per thousand?

A. Yes sir. In exhibit 7 I still continued to keep pine at $10.00 per thousand and 4,000,000 at $3.00. That refers to stumpage. In exhibit 8 on January 1st 1902 lumber is still carried at $10.00 per thousand and pine stumpage at $3.00 amount pine stumpage 4,000,000 feet. The hard wood stumpage was carried at $5/00. As to the principal items contained in these statements of the timber stumpage and the pine lumber and the hard wood lumber, lath and shingles with the exception of those my attention has been called to as I now recollect I kept the same prices practically right through. My logging outfit I listed in these statements substantially the same about all the time I think. I don't think there was any substantial difference in the number of horses and carts. After I had my second mill constructed there was no substantial difference as to the value of my plant. As near as I could get at it the estimate that I made as to the amount and value of my property at the time I made it represented approximately my judgment as to the value to me in my business as I was operating it. There was nothing accurate about it. I never at any time had any contract or agreement to renew or keep in force any stumpage contract with anyone after May 1st, 1902. The stumpage contract I had with Mr. Thayer just lasted for one winter. I have forgotten what winter that

245 was. That was the year previous to the year I quit business. My stumpage contract with Laird-Norton expired previous to February 20th, 1902. As near as I could get at it at the time I made these various statements the value I put on each was approximately what I then at the time thought they were worth. It is not now in view of what I have learned of the selling price of this property what I think the property which I listed in my statements of February 1st, 1902 was worth. It isn't now worth the amount at which I listed it.

Q. Do you think now it was worth that amount at that time?

Defendant's counsel objects as fully gone over and no proper redirect examination. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. No sir. All the lumber that I had that was embraced in the transfer to the Waters-Clark Lumber Company was transferred to them at a price fixed at $6.00 per thousand. All the logs which I carried in these invoices and statements or all in the one of February 1st 1902 at least, were carried at $8.00 per thousand and were transferred to the Waters-Clark Lumber Co. at the price of $6.00 a thousand. The mill machinery and the mill which I had been listing at $5,000 was destroyed by fire, whether you call it one mill or two mills. The mill which I started to construct in Eau Claire in the winter of 1901 was located on a tract of land which I purchased from the Valley Lumber Co. With that purchase I acquired some pulleys shafting and machinery of that kind. I testified that I had not paid anything on it. At the time of making that purchase I negotiated a contract with the Valley Lumber Co. by which I
246 agreed to pay $2500.00 and give them among other things security on all the machinery that was in there.

Q. As to this statement of February 1st 1902 you were asked by Mr. Wickham or your attention was called to the fact that you had listed here some labor claims due to laborers amounting to some $823.00; you were asked as to whether or not you attempted to give a list of what you owed for labor. Was that list intended to cover labor you owed for which time checks had been issued?

A. No time checks had been issued for that labor. That was labor that I owed for for which as yet I had issued no time checks. It was labor up to that time. At that time there were a great many time checks out and held by the Eau Claire National Bank. I have no knowledge of the amount of money which I collected between Feb. 7th and Feb. 20th when I gave chattel mortgage. I mean collected on the accounts of the people that were owing me.

Q. I will ask you as to whether or not after your fire on Feb. 14th you made any special effort to collect in accounts?

Defendant objects as leading. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Yes I collected all I could. At the time from Feb. 7th to Feb. 19th when Mr. Lockwood was up at Cadott my books were way behind in the matter of posting. I couldn't tell you how much but a long ways. I never in the world had any experience as a bookkeeper. I have never at any time attempted to keep books prior to the conduct of this business only in a general way, in my way of doing it. I don't think I testified in answer to any question
247 that I thought all of the time checks that were held by the bank were for labor. I didn't mean to be understood that all of the time checks were for labor and I don't think I said that. These time checks which were issued during the winter of 1901, 1902 were payable April 15th I think. April 1st or 15th I don't know which.

Plaintiff's counsel offers in evidence certified copy of the contract between the Valley Lumber Co. and John H. Young. Said contract was received in evidence and marked for identification exhibit C-1. The following is a copy of exhibit C-1.

This Agreement, made and entered into this 22nd day of August 1901, by and between the Valley Lumber Co., a corporation of the city of Eau Claire, Wisconsin, party of the first part, and J. H. Young, of the same place, party of the second part.

Witnesseth that the said party of the first part hereby agrees and binds itself, and its legal representatives, to sell and convey unto the said party of the second part all of the following described lands, situated and being in the city of Eau Claire, Wisconsin, namely: A piece of land bounded on the north by Menominee Street, on the east by the lands of R. A. McDonald and the Empire Lumber Co., on the south and west by the Chippewa River and the Half Moon Lake Canal, together with what is known as the Valley Lumber Company's shingle mill, a building now located and being on said land; and said party of the first part hereby sells, assigns and transfers to said party of the second part the following described personal property, situated in said building, viz.— 1 shaft, 5 feet 11 inches long, 2 15/16 diameter; 1 square friction, 20 inches diameter, 8 inch face, iron, 2 15/16 inches diameter;
sqtuare friction 30 inches diameter, 8 inch face, paper 2 5/8
248 inches diameter; 1 belt pulley, 36 inches diameter, 9 inch face, 2 15/16 hole and boxes to go with the above shaft; 1 shaft 7 feet long, 2 5/8 inches diameter; 1 square friction 20 inches in diameter, 8 inch face, paper, iron 2 5/8 inches diameter; 1 belt pulley, 35 inches diameter, 8 inch face, 2 5/8 inch hole and all boxes to go with above shaft; shaft 4 feet 6 inches long, 2 5/8 inches diameter, 1 square friction 20 inches diameter, 8 inch face, paper, 2 5/8 inches diameter; 1 belt pulley, 36 inches diameter, 10 inch face 2 5/8 inch hole and all boxes to go with the above shaft and one wood slasher. Also all of the one fourth interest of the Valley Lumber Co. in and to the stock rights, privileges and assets of the Half Moon Lake Canal Co., a corporation of Eau Claire, Wisconsin, for the sum of $2,500, to be paid to it by the said party of the second part, in the following manner, to wit: $1250 on or before one year from August 1st, 1901, with interest at the rate of six per cent. per annum and the further sum of $1250 on or before the 1st day of August, 1903, with interest thereon at the rate of six per cent. per annum.

Said party of the first part further covenants and agrees that upon said payments so made, it will by good and sufficient warranty deed convey all of said lands to said second party and will properly assign, transfer and set over to him all of its stock in said Half Moon Lake Canal Company aforesaid, and cause such stock to be transferred to said party of the second part on the books of said corporation.

Said party of the second part agrees that in case of default in making such payments, or any part thereof, at the time above

agreed upon, or in performing any of the conditions hereof, said party of the first part may, and it is hereby authorized and
249 empowered, with the aid and assistance of any person or persons to enter into or upon any place where said described personal property may be, and take possession of the same, and convey it away, and after the expiration of five days from the date of such seizure of said property, to sell and dispose of the same at private or public sale, with or without notice, at its discretion, or so much thereof as may be necessary to satisfy the said debt and interest, and all costs and expenses of taking, keeping, and disposing of said property together with ten dollars for attorney's fees, and to retain the same out of the proceeds of said sale, rendering the surplus, if any, to the said party of the second part. And in case the said party of the first part shall, at any time deem the said personal property or debt insecure, it is hereby authorized and empowered to take immediate possession of said personal property or any part thereof, in the manner aforesaid, and sell the same and apply the proceeds as above specified.

Said party of the second part hereby agrees that he will pay all taxes and assessments, special or general, which have been or shall be assessed against the said premises after the first of January, 1902, whenever such taxes shall become payable by law, until the aforesaid purchase money shall be fully paid in the manner above stated, and will also keep insured the said building and personal property herein described, for the full sum for which a responsible insurance company will insure the same, said sum to be not less than two thousand five hundred dollars, which insurance shall be made payable to the said first party as its interests shall appear; and it
250 shall be lawful for the first party, in case the second party fails or neglects to so insure said property, to effect such insurance, and all payments thereof, together with interest at six per cent. per annum, shall be a lien upon said property and premises, and added to the amount secured by these presents; and the said second party shall hold the said premises from the date hereof as the tenant at sufferance of said first party, subject to be removed as its tenant holding over, by process under statute in such case made and provided, whenever default shall be made in the payment of any of the installments of purchase money as aforesaid, or in failing to keep said property insured as aforesaid.

And it is further agreed by and between the parties hereto, that if said second party fails to make any of the payments above specified, at the time or in the manner specified, or fails to keep insured the said building and property, as aforesaid, then this agreement shall be henceforth void, and all payments thereon forfeited to the first party, subject to be revived and renewed at the option and by the act of the first party.

It is further mutually understood and agreed by and between the parties hereto, that in lieu of payment to said first party by said second party, either or all of the installments of purchase money hereunder in cash, said second party may deliver to said first party, on board cars or rafts, at the option of said first party, at the city of Eau

Claire, Wisconsin, and said first party shall accept as equivalent to cash hereunder, shingles to be manufactured by said second party; which shingles shall be received and accepted at the then current wholesale price of the same at the city of Eau Claire, Wis-
251 consin.

It is further mutually understood and agreed that said first party may enter upon the land herein described at any time, and remove therefrom any and all buildings, machinery and improvements, thereon not herein specifically described, using ordinary care and diligence so to do, and shall not be liable for any damage caused thereby to said second party, his heirs and assigns.

It is further mutually understood and agreed by and between the parties hereto; that said second party may upon the execution of this agreement, enter into and take possession of said lands and buildings, but the title to the same shall remain and be in said first party until the full performance by the said second party of all his agreements hereunder.

In witness whereof the party of the first part has caused this instrument to be executed and signed by its president and secretary and its corporate seal attached hereto, and the second party has hereunto set his hand and seal, the day and year first above written.

VALLEY LUMBER COMPANY,
By WILLIAM CARSON, *President*,
T. G. FOSTER, *Secretary*.
J. H. YOUNG. [SEAL.]

In presence of
HERBERT ROBERTS.
W. F. GILMAN.
ANNA LAWLER.
A. M. BUNDY.

STATE OF IOWA, *County of Des Moines*, ss:

Be it remembered that on this 22 day of August, 1901 personally appeared before me the above named William Carson and
252 T. H. Foster to me known to be the persons and officers of the Valley Lumber Company who executed the foregoing instrument and acknowledged the execution thereof to be their own free act and deed.

L. C. WALBRIDGE,
[SEAL.] *Notary Public.*

STATE OF WISCONSIN, *Eau Claire County*, ss:

Be it remembered that on this 24th day of August, 1901 personally appeared before me the above named John H. Young to me known to be the person who executed the foregoing instrument and acknowledged the execution thereof to be his own free act and deed.

ARTHUR M. BUNDY,
Notary Public, Wisconsin.

Q. You testified this morning Mr. Young that you thought after Feb. 1st or at any rate prior to Feb. 20th you shipped a considerable number of shingles and lath to Knapp, Stout & Co. or Weber & Co. and to various other people. I will ask you as to whether or not the shingles and lath that you shipped were part of the shingles and lath which you included in your statement of Feb. 1st?

A. Yes sir. I did ship some of those shingles after the mortgage was given. The way I came to do that was Mr. Clark told me
253 I could use those. He told me I could ship those shingles and take the outstanding debts to help fix this mill down here. I got my pay for the shingles I shipped to Knapp, Stout & Co. in a circular carriage and a trimmer and a lath mill and some other machinery. I procured those things for this saw mill down here. That was subsequent to the giving of a chattel mortgage that Mr. Clark told me that This was the mill here that I was to use for the sawing of those logs. I don't know the date that the chattel mortgage was taken off the file. I told them they hadn't ought to put that on record because it was hurting me. The statement I testified from this morning containing the claim of the Standard Oil Co. in the schedule filed in bankruptcy in the bankruptcy court and stating that the debt was contracted in April and May, 1902 is an error. I did not have any occasion to buy oil after I quit business in February 1902. The oil I bought was oil that was used in camp and milling operations. I did not conduct any business at all up there after I gave the chattel mortgage to the Eau Claire National Bank. I had nothing to conduct business with. After that time I did not employ any help or attempt to conduct any business and have not conducted any business of any kind since that time. I did not pay anything to the Chippewa Lumber & Boom Co. for renewing my stumpage contract from 1901 to 1902. They did not charge me anything for renewing it for another year. The house I testified to having here in Eau Claire burned in the fall of 1901. I used the insurance money for rebuilding the house.

Q. Now Mr. Young, you testified this morning that at the time you paid Mr. Monroe $1600 and some odd dollars that you
254 didn't think whether you had property enough to pay other creditors or not. I will ask you why at the time you paid Mr. Monroe you didn't pay all of your other creditors?

A. I didn't have anything to pay them with. At that time on March 12th 1902 I had not inherited any property since Feb. 20th nor acquired any property in any manner subsequent to that time. After Feb. 20th I had not acquired any property up to March 12th.

Q. On March 12th you owed and you knew that you owed the Eau Claire National Bank a good many thousand dollars in excess of what had been transferred to them did you.

Defendant objects as leading. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Yes sir.

Q. And you knew at that time did you not Mr. Young that Mrs.

Moon, the Eau Claire Grocer Co., The Valley Lumber Co. and the rest of the creditors that you mentioned had not been paid.

Defendant objects as leading. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Yes sir.

Q. And you were cognizant and knew at that time what property you had left which you had not transferred did you not?

Defendant objects as leading. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Yes sir.

255 Q. What do you mean to be understood when you testified this morning that at the time you paid Mr. Monroe you didn't think or had not thought anything about whether you had property enough to pay your other creditors or not?

Defendant objects to the question on the ground that the testimony the witness gave was clear specific and nothing about it which it is necessary to explain. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I knew I hadn't.

Defendant moves to strike out the answer as improper. The court granted the motion.

Q. Did you mean to be understood when you testified this morning that at the time you paid Mr. Monroe you didn't think or hadn't thought anything about whether you had property enough to pay your other creditors or not?

A. The bank had it all but just a little I had.

Q. Did you mean to be understood as testifying that you didn't know when you paid Mr. Monroe whether you had property enough to pay your other creditors or not?

Defendant objects to the question as incompetent, irrelevant and immaterial. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I didn't have nothing because——

Defendant moved to strike out the answer which motion was granted by the court.

WITNESS (continued): I didn't mean to be understood as
256 testifying that I didn't know when I paid Mr. Monroe whether I had property enough to pay my other creditors or not.

Q. Well did you know that?

A. Yes.

Defendant moved to strike out the answer as not responsive and as being improper.

The COURT: Well the two answers I think are responsive.

Mr. WICKHAM: Does the court refuse to strike out the answer.

The COURT: Yes.

To which ruling and decision the defendant duly excepted.

Q. Did you mean to testify in answer to Mr. Wickham's question that when you paid Mr. Monroe you didn't know whether you had property enough to pay the rest of them or not?

A. I didn't have at that time, no sir.

Defendant moves to strike out the answer as improper and not responsive to the question.

Q. Well if you hadn't any property at that time did you know you didn't have?

A. I know I didn't have because they had it all.

Defendant moved to strike out the answer as improper which motion was granted by the court.

Q. You testified this morning that at that time you didn't know. I ask you now if that testimony is the way you wish to have it understood?

A. No I didn't wish to have it understood that way.

Q. Did you on March 12th and at all times after that, up to now, and do you now know, and have you known ever since March 12th and February 20th 1902, that the property which you
257 have left will not pay your debts.

Defendant objects to the question as incompetent, irrelevant and immaterial.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I do. It won't pay them. At the time I filed my petition in bankruptcy on June 7th 1902 I did not have any property except what was listed by me as a bankrupt.

Q. At the time you made the mortgage to the Eau Claire National Bank of all the lumber, lath and shingles and all the so called down river logs what knowledge did you have as to whether or not you had property enough to pay all your other creditors?

Defendant objects to the question as not proper redirect examination.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Well I didn't have enough.

Q. At that time and after your fire and your mill had burned down, didn't you think over the amount of your property and the value of it and the amount of your indebtedness?

Defendant objects to the question as leading.

The court overruled the objection to which ruling an- decision the defendant duly excepted.

A. I didn't have very much.

Plaintiff moved to strike out the answer which motion the court granted.

Q. Mr. Young at the time you gave these chattel mortgages to the Eau Claire National Bank did you realize the amount of money that you owed?

258 Defendant objects to the question as not proper redirect examination.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. Yes I realized it. At that time I realized the amount of property which I had.

Q. Did you at that time know and believe that the property which you owned was not sufficient to pay all your creditors?

Defendant objects to the question as leading.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I know it was not yes sir. At the time I was requested to make these chattel mortgages I gave Mr. Coffin some information on that subject.

Recross-examination.

Examined by Mr. WICKHAM:

I gave time check No. 487 and No. 505 dated respectively Dec. 9th 1901 and December 19th 1902, issued to J. E. Reagan to pay the wages of the men whose names are written on the back of the orders. They all worked for me. They all earned the wages in the amount set opposite their respective names. They all worked there.

Q. And instead of giving individual orders to the men you gave the orders for their wages to Mr. Reagan naming the names of the men who did the work on the back of them and paid the wages in that way?

A. Some of them were that way and some were orders that they owed in the store that Mr. Reagan had figured out and they had authorized Mr. Reagan to have me pay them. I was paying them because the men worked for me and these were the amounts due them for their wages and they owed Mr. Reagan. They

259 had given a verbal order. As to these two time checks I owed the men whose names are on the backs of the checks and they owed Mr. Reagan and instead of giving them the order direct I made the orders in this way for the amount of their wages.

Examined by Mr. BUNDY:

The men whose names are written on the backs of these checks had the amounts of money named there coming to them for wages for work they had done on the logs. They would give Reagan some kind of an order on me to pay their wages to Reagan. When I gave these orders to Reagan it was to pay these wages and I think some had time checks cashed and we put them together. That is true of both of these time orders.

Examined by Mr. WICKHAM:

I think all these time orders for wages that the bank held in March 1902 were for labor which was performed on the logs and lumber the preceding winter and I think it was all performed since November 1st. It was just as I said when Mr. Bundy was handing them to me. I can explain them again if necessary.

Examined by Mr. BUNDY:

I think all these time checks were for labor after November 1st 1901.

Witness Excused.

C. W. LOCKWOOD, recalled by plaintiff testified as follows:

Examined by Mr. BUNDY:

On exhibit M there are no supply orders that I know of at all. I had looked over the list with a view of ascertaining that, to separate the supply orders from the labor orders. I looked
260 them over very carefully. All the orders which we have paid and which went to make up a part of the $18,000 in time checks outside of the supply orders which the bank held on March 29th were for labor on their face. All the orders which were drawn were for labor. I couldn't tell you exactly whether there were any orders drawn which was figured in that $18,000 which went to pay for stumpage or to somebody who was selling logs. J. H. Haskins drew the orders after that, and he would know about that.

Examined by Mr. WICKHAM:

This $18,565.54 included money that was paid as the purchase price of logs to McKinnon and some others.

Examined by Mr. BUNDY:

I think all the orders which were drawn on the Waters Clark Lumber Co. and the cash which was paid by the Waters Clark Lumber Co. went to pay for the logs. It went to the contractor who put in the logs at so much per thousand. They furnished their own stumpage and sold the logs at so much a thousand.

Q. Here is a bundle of orders. I call your attention to the check which is at the bottom of it which appears to be to McKinnon. Do you understand that check was the amount of money which the Waters-Clark Lumber Co. paid to McKinnon in addition to paying the McKinnon time orders?

A. Yes sir. That $2,627.95 is figured in as a part of the $18,000 which was paid out against the logs. That $2,744.76 are orders drawn on the Waters-Clark Lumber Co. by Mr. Haskins. Mr. Haskins was Mr. Young's foreman. Mr. Haskins was the man that scaled these upper logs and who knew all about the contracts and prices to be paid to those jobbers. He was naturally called on

by the Waters-Clark Lumber Co. to settle up with them
261 and in that settlement made these orders on the Waters-Clark Lumber Co. to pay what was owing those jobbers, the purchase price of the logs after the orders which they had drawn on account had been deducted. There was $2744.76 of this $18,000 and something that has been paid on the logs, that was paid to various jobbers in addition to the time orders which they had issued in putting in those logs. It would be the sum of these two amounts, $2744.76 and $2627.65 which the Waters-Clark Lumber Co. paid on the upper logs in addition to paying the time checks. I have only copies of the scale report made by Mr. Haskins in addition to this other information. I know I got a large number of reports made by Haskins on these various jobbers. I don't remember whether Young gave them to me or Haskins. I hav-n't them here. I do not remember some order paid to the Eau Claire Grocer Co. for supplies. I don't remember any orders paid for supplies on the up river logging transaction. By tomorrow morning I could give you substantially the correct amount as to just how much went to pay time checks for wages and how much went to pay for stumpage and logs but I wouldn't agree to make it exact because there is some ambiguity in the orders, the way they are drawn.

Witness Excused.

It is admitted that mortgage from John H. Young to L. C. Jones of date August 23rd, 1896 was recorded in the office of the register of deeds of Eau Claire County on the 5th day of September, 1896, in volume 44 of mortgages on page 57, on the homestead of Mr. Young for $1400.

Plaintiff's counsel re-offers exhibit N. in evidence with the following additional certificates;

262 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, clerk of the district court of the United States of America, for the western District of Wisconsin, do hereby certify that H. M. Lewis of the city of Madison, in said district, is a duly appointed and qualified referee in bankruptcy of said United States District court for the western District of Wisconsin.

I further certify that in conformity with subdivisions of section 39 of the bankruptcy law of '98 said H. M. Lewis referee as aforesaid has this day transmitted to the undersigned all of the files remaining in his office in the matter of John H. Young, bankrupt, together with the original claim docket and of record in the office of such referee in which docket are registered the date of filing claim, names of creditors, address of creditors, attorney if any, for creditors and the amount claimed by the creditors and allowed.

I further certify that I have compared the writing annexed to this certificate with the original entries made in said claim docket by said referee in the matter of John H. Young bankrupt and that the annexed writing is a true and correct copy of said original entries and

are correct transcripts therefrom and of the whole thereof as shown by the records and files of said referee in said matter now in my custody and possession as aforesaid: that I have carefully compared the annexed copy with the claims on file in my office and that the same is true and correct as therein set forth and a true copy of the whole thereof.

In testimony whereof I have hereunto set my hand and
263 duly affixed the seal of the said court at the city of Madison in the said western district of Wisconsin this 3rd day of April, A. D. 1903 and of the independence of the said United States the 127th.

(Signed) F. W. OAKLEY, *Clerk*,
By F. D. REED, *Deputy*.

Defendant's counsel objects as incompetent, irrelevant and immaterial and objects to each certificate as being incompetent, irrelevant and immaterial and being improper in form and containing matters which are not proper in a certificate of record. The court overruled the objection and again received exhibit N in evidence with additional certificate to which ruling and decision the defendant duly excepted.

Plaintiff offers in evidence certified copy of certain of the claims filed against John H. Young in bankruptcy court.

Defendant's counsel object to the claims and the affidavit purporting to be proofs of claims as being incompetent, irrelevant and immaterial and on the grounds that neither the claims nor any copy thereof even if properly certified would be any proof of the existence of the indebtedness. Defendant's counsel also object to the copies for the reason that they are incompetent, irrelevant and immaterial and objects to them on the further ground that they are not properly authenticated and that no proper proof is offered to entitle them to admission.

"Plaintiff's counsel stated: I will say to the court that we are not depending on the certified copy of the claims filed to prove the indebtedness. I offer it for the purpose of showing what claims were filed in the bankruptcy court. These are not all the claims that we filed. This is for the purpose of showing that the trustee did not have in his hands sufficient assets to pay claims filed, which would be necessary in order to warrant him to bring this action."

The court overruled the objection to which ruling and decision defendant duly excepted.

264 Said certified copy of claims received in evidence and marked for identification Exhibit D-1.

The following is a copy of Exhibit D-1:

"$1.00 revenue stamp, 10 cent revenue stamp, 10 cent revenue stamp.

$6,000.00. EAU CLAIRE, *April* 26, 1901.

Six months after date I proimse to pay to Sallie F. Moon of Eau Claire, Wis., for value received, six thousand dollars, ($6,000.00)

with interest on the same at six per cent. (6%) per annum from the date hereof until paid. Payable at Eau Claire, Wisconsin.

JOHN H. YOUNG."

On the back is the following indorsement:

"T. F. Frawley. April 24th, 1902. Paid on within note One thousand fifty nine and 86/100 Dollars. $1,059.86.

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

At Eau Claire, in said district of Wisconsin on the — day of June, A. D. 1902, came —— —— of Eau Claire, Wis., and made oath and says that John H. Young the person by whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition, and still is justly and truly indebted to said deponent in the sum of $5360.14; that the consideration of said debt is as follows; Money loaned to said John H. Young and which indebtedness is evidenced by a promissory note, a copy of which is hereto annexed and the original of which is hereby exhibited to the
265 court, that no part of said debts has been paid (except that there are no set offs or counter claims to the same) except and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

SALLIE F. MOON, *Creditor.*

Subscribed and sworn to before me this 11th day of June, A. D. 1902.

ARTHUR M. BUNDY,
Notary Public, Wis.

[SEAL.]

Commission expires Sept. 12, 1903."

And on the back is this:

Mrs. Moon, File No. 5 In Bankruptcy. In the Matter of John H. Young, Bankrupt. Amount of debt $5360.14. Proof of unsecured debt. Filed June 23, 1902. H. M. Lewis, Referee."

"This Agreement, made and entered into this 22nd day of August, 1901 by and between the Valley Lumber Company, a corporation of the city of Eau Claire, Wisconsin, party of the first part, and J. H. Young, of the same place, party of the second part.

Witnesseth, that the said party of the first part hereby agrees and binds itself, and its legal representatives, to sell and convey unto the said party of the second part, all of the following described lands, situated and being in the city of Eau Claire, Wisconsin, namely: A Piece of land bounded on the north by Menominee Street, on the east by the lands of R. A. McDonald and the Empire Lumber Company, on the south and west by the Chippewa River and the half

Moon Lake Canal, together with what is known as the Valley
266 Lumber Company's shingle mill, a building now located and being on said land and said p-rty of the first part hereby sells, assigns and transfers to said party of the second part the following described personal property, situated in said building, viz: 1 shaft, 5 feet, 11 inches long, 2 15/16 diameter; 1 square friction, 20 inches diameter, 8 inch face, iron, 2 15/16 inches diameter; 1 square friction, 30 inches diameter, 8 inch face, paper, 2⅝ inches diameter, 1 belt pulley, 36 inches diameter, 9 inch face, 2 15/16 hold, and boxes to go with above shaft, 1 shaft 7 feet long, 2⅝ inches diameter; 1 square friction 20 inches diameter, 8 inch face, paper, iron, 2⅝ inches diameter; 1 belt pulley, 36 inch diameter, 8 inch face, 2⅝ inch hole, and all boxes to go with above shaft, 1 shaft 4 feet 6 inches long, 2⅝ inches diameter; 1 square friction, 20 inches diameter, 8 inch face, iron, 2⅝ inches diameter; 1 square friction 20 inches diameter, 8 inches diameter, paper, 2⅝ inches diameter; 1 belt pulley, 36 inches diameter, 10 inch face, 2⅝ inch hole, and all boxes to go with above shaft, and 1 wood slasher; also all of the one fourth interest of the Valley Lumber Company in and to the stock, rights, privileges and assets of the Half Moon Lake Canal Company, a corporation of Eau Claire, Wisconsin, for the sum of $2,500, to be paid to it by the said party of the second part in the following manner, to-wit: $1250 on or before one year from August 1st, 1901, and with interest at the rate of six per cent. per annum, and the further sum of $1250 on or before the 1st day of August, 1903, with interest thereon at the rate of six per cent. per annum.

Said party of the first part further covenants and agrees that upon said payments so made, it will, by good and sufficient
267 warranty deed, convey all of said lands to said second party, and will properly assign, transfer and set over to him all of its stock in said Half Moon Lake Canal Company aforesaid, and cause such stock to be transferred to said party of the second part on the books of said corporation.

Said party of the second part agrees that in case of default in making such payments, or any part thereof, at the time above agreed upon, or in performing any of the conditions hereof, said party of the first part may, and it is hereby authorized and empowered, with the aid and assistance of any person or persons, to enter into or upon any place where said described personal property may be, and take possession of the same, and convey it away, and after the expiration of five days from the date of such seizu*e*r of said property, to sell and dispose of the same at private or public sale, with or without notice, at its descretion, or so much thereof as may be necessary to satisfy the said debt and interest, and all costs and expenses of taking, keeping and disposing of said property, together with ten dollars for attorneys' fees, and to retain the same out of the proceeds of said sale, rendering the surplus, if any, to the said party of the second part. And in case the said party of the first part shall, at any time, deem the said property or debt insecure, it is hereby authorized and empowered to take immediate possession of said personal property, or any part thereof in the manner aforesaid, and sell the same and apply the proceeds as above specified.

Said party of the second part hereby agrees that he will pay all taxes and assessments, special or general, which have been or shall be assessed against the said premises after the first of Janu-
268 ary, 1902, whenever such taxes shall become payable by law, until the aforesaid purchase money shall be fully paid in the manner above stated, and will also keep insured the said building and personal property herein described, for the full sum for which a responsible insurance company will insure the same, said sum to be not less that two thousand five hundred dollars, which insurance shall be made payable to the said first party as its interest shall appear, and it shall be lawful for the first party, in case the second party fails or neglects to so insure said property, to affect such insurance, and al payments therefor, together with interest at six per cent. per annum, shall be a lien upon said property and premises, and added to the amount secured by these presents; and the said second party shall hold the said premises from the date hereof as the tenant at sufferance of said first party, subject to be removed as its tenant holding over, by process under statute in such case made and provided, whenever default shall be made in the payment of any of the installments of purchase money as aforesaid, or in failing to keep said property insured as aforesaid.

And it is further agreed by and between the parties hereto, that if said second party fails to make any of the payments above specified, at the time or in the manner specified, or fails to keep insured the said building and property, as aforesaid, then this agreement shall be henceforth void, and all payments thereon forfeited to the first party, subject to be revived and renewed at the option and by the act of the first party.

It is further mutually understood and agreed by and be-
269 tween the parties hereto, that in lieu of paying to said first party by said second party, either or all of the installments of purchase money hereunder in cash, said second party may deliver to said first party, on board cars or rafts, at the option of said first party, at the city of Eau Claire, Wisconsin, and said first party shall accept as equivalent to cash hereunder, shingles to be manufactured by said second party; which shingles shall be received and accepted at the then current wholesale price of the same at the city of Eau Claire, Wisconsin.

It is further mutually understood and agreed that said first party may enter upon the land herein described at any time, and remove therefrom any and all buildings, machinery and improvements thereon not herein specifically described, using ordinary care and diligence so to do, and shall not be liable for any damage caused thereby to said second party, his heirs and assigns.

It is further mutually understood and agreed by and between the parties hereto, that said second party may upon the execution of this agreement, enter into and take possession of said land and buildings, but the title to the same shall remain and be in said first party until the full performance by the said second party of all his agreements hereunder.

In witness whereof the party of the first part has caused this instrument to be executed and signed by its president and secretary

and its corporate seal attached hereto, and the second party has hereunto set his hand and seal, the day and year first above written.

VALLEY LUMBER COMPANY,
By WILLIAM CARSON, *President.*
T. G. FOSTER, *Secretary.*
J. H. YOUNG. [SEAL.]

270 [SEAL.]

In presence of
W. F. GILMAN.
ANNA LAWLER.
A. M. BUNDY.

STATE OF IOWA, *County of Des Moines, ss:*

Be it remembered that on this 22nd day of August, 1901, personally appeared before me the above named William Carson and T. G. Foster to me known to be the persons and officers of the Valley Lumber Company who executed the foregoing instrument and acknowledged the execution thereof to be their own free act and deed.

L. E. WALLBRIDGE,
[SEAL.] *Notary Public.*

STATE OF WISCONSIN, *Eau Claire County, ss:*

Be it remembered that on this 24th day of August, 1901, personally appeared before me the above named J. H. Young, to me known to be the person who executed the foregoing instrument and acknowledged the execution thereof to be his own free act and deed.

ARTHUR M. BUNDY,
[SEAL.] *Notary Public, Wisconsin.*

Commission expires Sept. 12, 1903.

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt, in Bankruptcy.

271 At Eau Claire, in said district of Wisconsin, on the 12th day of June A. D. 1902, came Byron A. Buffington of Eau Claire, in the county of Eau Claire, in said District of Wisconsin, and made oath, and says that John H. Young, the person by whom the petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to The Valley Lumber Company in the sum of $2500.00 with interest thereon at 6% from August 22nd, 1901, that the consideration of said debt is as follows: Purchase price agreed to be paid for the following described real estate: A piece of land bounded on the north by Menominee Street, on the east by the lands of R. A. McDonald and the Empire Lumber Company on the south and west by the Chippewa River and the Half Moon Lake Canal together with a shingle mill building thereon; all situate in Eau Claire city and county, State of Wisconsin; that no part of said debt has been paid. That there are no set offs or counterclaims to the same, and

that the only securities held by this deponent for said debt are the following; a land contract by which the said Valley Lumber Company agreed to convey said land to said John H. Young on the payment of said sum of $2500, which contract is hereto annexed marked "Exhibit A" & made a part hereof. Affiant further says that the Post office address of said Valley Lumber Company is Eau Claire, Wis. and that affiant is an officer towit, the President of said Valley Lumber Company and is authorized by it to make this proof of claim.

BYRON A. BUFFINGTON,
Creditor.

Subscribed and sworn to before me, this 12th day of June, A. D. 1902.

A. J. KEITH,
Notary Public, Wis.

[SEAL.]

My commission expires September 27, 1902.

272 On the back of said paper is the following

Valley Lumber Co. File No. 25. In Bankruptcy. In the matter of John H. Young, Bankrupt. Amount of debt $2500 Proof of Secured Debt. Filed June 23, 1902. H. M. Lewis, Referee.

In the District Court of the United States, Western District of Wisconsin.

In the District Court of the United States, Western District of

At Eau Claire, in said district of Wisconsin, on the 9th day of December A. D. 1902, came H. A. Cameron in said district of Wisconsin and made oath, and says that he is Treasurer of Eau Claire Grocery Company a corporation organized and existing under and by virtue of the laws of the State of Wisconsin doing business as such at the City of Eau Claire in the county of —— State of Wisconsin. That J. H. Young the person whom the petition for adjudication of bankruptcy has been filed, at and before the filing of said petition was and still is justly and truly indebted unto the said Eau Claire Grocery Company in the sum of Fourteen Hundred and ninety-six & 68/100 Dollars. That the original consideration of said indebtedness was goods, wares and merchandise sold and delivered by the said Eau Claire Grocery Co. to the said John H. Young the said bankrupt herein at his special instance and request upon account, between the — day of —— 190– and the — day of —— 190–. That an itemized statement of said account is hereto annexed, marked Exhibit A" and made a part hereof. That —— dollars of said indebtedness is evidenced by notes, the originals of which are here-

273 with produced to be marked by the referee, for the purpose of identification, Exhibit —— respectively. Deponent further says that no part of said debt has been paid (except) —— that there are no offsets or counter claims to the same (except)——. That this deponent nor has any person by its order or to this deponent's

knowledge or belief, for its use has had or received any manner of security whatsoever from the bankrupt herein, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned; that the only securities held by this deponent for the said debt are the following:

H. A. CAMERON,
Treasurer of Company.

Subscribed and sworn to before me this 9th day of December 1902.

WALTER M. HEINER,
Notary Public, Eau Claire County,
[SEAL.] *State of Wisconsin.*

My commission expires June 17th, 1906."

On the back is the following.

No. 36. District Court of the United States. Western District of Wisconsin. In Bankruptcy. In the Matter of J. H. Young, Bankrupt. Proof of debt and Power of Attorney. Claimant, Eau Claire Grocery Co. Address — State —. Filed Dec. 19, 1902. H. M. Lewis, Referee. Tenney Hall & Swanson, Attorneys for Creditor."

$373.37. EAU CLAIRE, WIS., *Nov.* 17, 1901.

Ninety days after date, for value received, I promise to pay
274 to the order of Eau Claire Mill Supply Company three hundred seventy three 37/100 dollars at Eau Claire National Bank, with interest at the rate of eight per cent. per annum until paid.

J. H. YOUNG.

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt, in Bankruptcy.

At Eau Claire, in said district of Wisconsin on the — day of June, A. D. 1902, came C. L. Tolles of Eau Claire and made oath, and says that John H. Young the person by whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition, and still is, justly and truly indebted to the Eau Claire Mill Supply Company in the sum of $373.37 and interest at 8 per cent. from November 17, 1901; that the consideration of said debt is as follows: Merchandise sold and delivered to said John H. Young and evidenced by a promissory note now held by the Eau Claire Mill Supply Co. That affiant is the treasurer of said Eau Claire Mill Supply Company and is authorized to and makes this proof in its behalf. That a copy of said note is hereto annexed. That no part of said debt has been paid. That there are no offsets or counterclaims to the same and that deponent has not, nor has anperson by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

C. L. TOLLES, *Creditor.*

Subscribed and sworn to before me this 10th day of June, A. D. 1902.

ARTHUR M. BUNDY,
[SEAL.] *Notary Public, Wisconsin.*

Commission expires Sept. 12, 1903.

275 On the back is the following "E. C. Mill Supply Co. File No. 35. In Bankruptcy. In the Matter of John H. Young, Bankrupt. Amount of debt. Proof of unsecured debt. Filed June 23, 1902. H. M. Lewis Referee."

In the District Court of the United States, Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

UNITED STATES OF AMERICA,
State of Wisconsin, West. District of Wis., ss:

At Menominee, in said district of Wisconsin, on the 19th day of June, A. D. 1902 came Thomas B. Wilson of Menominee in the county of Dunn, in said district of Wisconsin and made oath and says that he is Secretary and acting treasurer of the Knapp, Stout & Co. Company a corporation organized and existing under and by virtue of the laws of the State of Wisconsin doing business as such at the City of Menominee in the cou-ty of Dunn state of Wisconsin. That John H. Young the person for whom the petition for adjudication of bankruptcy had been filed, at and before the filing of said petition was and still is justly and truly indebted unto the said The Knapp, Stout, & Co. Company, in the sum of Two hundred thirty three & 30/100 Dollars. That the original consideration of said indebtedness was goods, wares and merchandise sold and delivered by the said The Knapp Stout & Co. Company, to the said John H. Young the said bankrupt herein at his special instance and request upon accou t on the 28th day of April, 1902. That an
276 itemized statement of said account is hereto annexed, marked Exhibit "A" and made a part hereof. Deponent further says that no part of original said debt has been paid (except) the sum of two hundred sixteen & 70/100 — the original debt having been four hundred and fifty dollars. That this deponent or any person on behalf of said corporation or to this deponent's knowledge or belief for its use has had or received no manner of satisfaction or security whatsoever from the bankrupt herein, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned. Deponent further says that he makes this proof on behalf and by authority of The Knapp, Stout & Co. Company. That the residence and post office address of said The Knapp, Stout & Co. Company is city of Menominee County of Dunn, State of Wisconsin.

THOMAS B. WILSON,
Secretary and Acting Treasurer of the Knapp Stout Co. Co.

Subscribed and sworn to before me this 19th day of June 1902.
[SEAL.] CHARLES E. FREEMAN,
Notary Public, Dunn County, State of Wisconsin.

My commission expires Dec. 17, 1905.

In the District Court of the United States, Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

To E. N. Warner and Ralph W. Jackman:

The Knapp, Stout & Co. Company of the city of Menominee, County of Dunn State of Wisconsin a corporation organized and existing under and by virtue of the laws of the state of Wisconsin does hereby authorize you, or any one of you, with power of
277 substitution, to attend the meeting of the creditors in this matter as advertised or directed to be holden at Madison Wisconsin on the 23rd day of June A. D. 1902, before Hon. H. M. Lewis, referee in bankruptcy, or any adjournment thereof and then and there appear for it and in its name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt, and to act as its attorneys-at-law in this proceeding.

In witness whereof it has caused these presents to be signed by one of its principal officers, to wit: its secretary and has affixed hereto its corporate seal this 19th day of June 1902.

THE KNAPP, STOUT CO. COMPANY,
[SEAL.] Per THOMAS B. WILSON,
Secretary & Acting Treasurer.

Acknowledged before me this 19th day of June A. D. 1902.
My commission expires Dec. 17, 1905.
CHARLES E. FREEMAN,
Notary Public, County of Dunn, State of Wis.

UNITED STATES OF AMERICA,
Western District District, *State of Wisconsin, ss:*

Thomas B. Wilson being first duly sworn on oath says he is Sec. & acting treasurer of said The Knapp Stout & Co. Company, a corporation and that he executed the above and foregoing power of attorney for and on behalf of said corporation as its free act and deed and that he is duly authorized so to do.

THOMAS B. WILSON,
Sec. & Acting Treas.

Subscribed and sworn to before me this 19th day of June 1902.
[SEAL.] CHARLES E. FREEMAN,
Notary Public, Dunn County, State of Wisconsin.

My commission expires Dec. 17, 1905.

278 On the back is the following: District Court of the United States, Western District of Wisconsin. In the Matter of John H. Young, bankrupt. Proof of debt and Power of Attorney. Claimant, Knapp, Stout & Co. Company, Address Menominee, State Wis. Filed June 23, 1902. H. M. Lewis Referee. Warner & Jackman, Attorneys for Claimant."

"In the District Court of the United States, for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

At Eau Claire, in said district of Wisconsin on the — day of June, A. D. 1902, came Emmet Horan of Eau Claire and made oath and says that John H. Young the person by whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition, and still is justly and truly indebted to McDonough Mfg. Co. in the sum of One Hundred Forty two 54/100 Dollars; that the consideration of said debt is as follows: For machinery sold and delivered to said John H. Young and for which he promised to pay said sum to McDonough Manufacturing Co. of Eau Claire. That affiant is secretary of said McDonough Mfg. Co. and is authorized to and makes this proof in its behalf. That no part of said debt has been paid. That there are no set-offs or counter claims to the same, and that deponent has not nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

EMMET HORAN, *Creditor.*

Subscribed and sworn to before me this 10th day of June A. D. 1902.

279 [SEAL.] ARTHUR M. BUNDY,
Notary Public, Wis.

Commission expires Sept. 12, 1903."

And on the back is the following: "File No. 12. In Bankruptcy In the Matter of John H. Young, Bankrupt. Proof of unsettled debt. Amount of debt $142.54. Filed June 23rd 1902. H. M. Lewis Referee."

$100.00. EAU CLAIRE, WIS, *Sept.* 16, 1901.

On or before eight months after date, for value received, I promise to pay The Daniel Shaw Lumber Company, or order, One Hundred Dollars at Chippewa Valley Bank, Eau Claire, Wisconsin, with interest from date at six per cent. per annum.

J. H. YOUNG.

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

At Eau Claire, in said district of Wisconsin, on the — day of June, A. D. 1902, came Eugene Shaw of Eau Claire, Wis. and made oath and says that John H. Young the person by whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition, and still is justly and truly indebted to Daniel Shaw Lumber Company in the sum of One Hundred Dollars; that the consideration of said debt is as follows: Merchandise purchased. This debt is evidenced by a promissory note, a copy of which is hereto annexed and the original of which is herewith presented to the court. That affiant is President of said Daniel Shaw Lumber Company and is authorized to and makes this proof in its behalf. That no part of said debt has been paid; that there are no set-offs or counter claims to the same, and that deponent has not, nor has any person by his order, or to his knowledge or behalf for his use, had or received any manner of security for said debt whatever.

280

EUGENE SHAW.

Subscribed and sworn to before me this 12th day of June A. D. 1902.

[SEAL.] ROY P. WILCOX,
Notary Public, Wis.

My commission expires January 9th, 1902."

And on the back: "File No. 9. In Bankruptcy. In the Matter of John H. Young, Bankrupt. Proof of Unsecured Debt. Amount of debt $100,000. Filed June 23rd, 1902. H. M. Lewis Referee."

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

At Eau Claire in said district of Wisconsin on the — day of June, A. D. 1902 came Roy P. Wilcox of Eau Claire and made oath, and says that John H. Young, the person by whom a petition for adjudication or bankruptcy has been filed was at and before the filing of said petition, and still is justly and truly indebted to the firm of Frawey, Bundy & Wilcox in the sum of Five Hundred Dollars; that the consideration of said debt is as follows: Services rendered to said John H. Young as attorneys prior to May 15th, 1902. That no part of said debt has been paid. That said firm of which affiant is a member, consists of T. F. Frawley, C. T. Bundy and affiant. That there are no set offs or counter claims to the same, and that

deponent has not, nor had any person by his order, or to
281 his knowledge or behalf, for his use, had or received any manner of security for said debt whatever.

ROY P. WILCOX, *Creditor.*

Subscribed and sworn to before me this 10th day of June, A. D. 1902.

ARTHUR M. BUNDY,
Notary Public, Wis."

On the back is the following: File No. 3. In Bankruptcy. In the Matter of John H. Young Bankrupt. Proof of unsecured debt. Amount of debt $500.00. Filed June 23rd, 1902. H. M. Lewis Referee.

In the District Court of the United States for the Western District of Wisconsin.

In the Matter of JOHN H. YOUNG, Bankrupt. In Bankruptcy.

At Cadott, in said district of Wisconsin, on the — day of June A. D. 1902 came Alex Lintz of Cadott, Wis. and made oath and says that John H. Young, the person by whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition, and still is justly and truly indebted to said deponent in the sum of One Hundred and fifty Dollars; th-t the consideration of said debt is as follows; Merchandise sold to said John H. Young on open account.

That no part of said debt has been paid; that there are no set-offs or counter claims to the same, and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

ALEX LINTZ, *Creditor.*

Subscribed and sworn to before me this 9th day of June A. D. 1902.

ARTHUR M. BUNDY,
[SEAL.] *Notary Public, Wis.*

Commission Expires Sept. 12, 1903.

282 On the back is the following. File No. 21. In Bankruptcy. In the Matter of John H. Young, Bankrupt. Proof of unsecured debt. Amount of debt $150.00. Filed June 23, 1902. H. M. Lewis Referee."

District Court of the United States, Western District of Wisconsin.

In the Matter of J. H. YOUNG, Bankrupt. In Bankruptcy.
No. 272 B.

I, H. M. Lewis Referee in Bankruptcy in and for the Western District of Wisconsin, do hereby certify that annexed to this certificate is a copy of each of the claims filed in my office against the estate of said Bankrupt by Sallie F. Moon, Valley Lumber Company, Eau Claire Grocer Company, Eau Claire Mill Supply Company, Knapp, Stout — Co. Company, McDonough Mfg. Co., Daniel Shaw Lumber Company, Alex Lintz and Frawley Bundy & Wilcox; that I have compared each of the copies hereto annexed with its original, and that the writings hereto annexed are true copies of their respective originals, and are correct transcripts therefrom, and are of the whole thereof, as filed in my office.

I further certify that in conformity with subdivision 8 of section 39 of the Bankruptcy Law of 1898, I have this day transmitted to the Clerk of the United States District Court for the Western District of Wisconsin at Madison in said District, all of the files and papers in the Matter of J. H. Young, Bankrupt, together with the original claim docket of my office, showing the date of filing claims nam-s of creditors, address of creditors, attorney, if any, for creditors, and the amount claimed by the creditors and allowed in the Matter of John H. Young Bankrupt.

283 In Witness whereof I have hereunto set my hand this 3rd day of April A. D. 1903.

H. M. LEWIS,
Referee in Bankruptcy.

UNITED STATES OF AMERICA, *Western District of Wisconsin, ss:*

I F. W. Oakley, C-erk of the District Court of the United States of America, for the Western District of Wisconsin, do hereby certify that H. M. Lewis, of the city of Madison, in said district is a duly appointed and qualified Referee in Bankruptcy of said United States District Court for the Western District of Wisconsin.

I further certify that in conformity with sub-division 8 of section 39 of the Bankruptc- Law of 1898, said H. M. Lewis, Referee as aforesaid, has this day transmitted to the undersigned all of the files remaining i- his office in the Matter of John H. Young Bankrupt, among which are included all of the claims which have been filed with said Referee against the estate of said Bankrupt.

I further certify that annexed to this certificate is a copy of each of the claims filed with said referee against the estate of said bankrupt by Sallie F. Moon, Valley Lumber Company, Eau Claire Grocery Company, Eau Claire Mill Supply Company, Knapp, Stout & Co. Company, McDonough Mfg. Co., Daniel -haw Lumber Company Alex Lintz, and Frawley Bundy & Wilcox, that I have compared each of the cppies hereto annexed with its original, and that

the writings hereto annexed are true copies of their respective originals, and are correct transcripts thereform and of the whole
284 thereof, now in my custody and possession as aforesaid.

In testimony whereof, I have hereunto set my hand and duly affixed the Seal of the said Court, at the City of Madison, in the said Western District of Wisconsin, this third day of April in the year of our Lord one thousand nine hundred and three, and of the Independance of the said United States the one hundred and twenty seventh.

[Seal U. S. District Court, Western District, Wisconsin, Madison.]

F. W. OAKLEY, *Clerk*,
By F. D. REED, *Deputy*.

"The statement attached to the claim of Knapp, Stout & Co. Company and referred to in the claim marked "Exhibit A" reads as follows:

MENOMONIE, WIS., *June 18th*, 1902.

Mr. J. H. Young bought of the Knapp, Stout & Co. Company, lumber manufacturers,

1902			
Apr. 28,	1 trimmer	$260	
	1 lath mill	150	
	1 grinder	40	
	Total		$450.00

CR.

By 2 carloads of shingles		216.70
Balance		$233.30"

285 C. W. LOCKWOOD recalled for plaintiff testified as follows;

Examined by Mr. BUNDY:

The $18,565.54 that I testified to having paid out was for labor on the Cadott logs. There was paid out on the Cadott logs: on orders, $9222.37. There was paid to McKinnon jobbers $2914.97. There was paid to William McKinnon $2627.95. There was paid to sundry jobbers $4177.30. of the first item of $9222.37 paid out on Cadott logs, there was $8,212.33 of that that was paid out on time orders and time checks for laborers engaged in hauling cutting, banking and handling the logs and the balance of $1,010.04 as I understand it was paid out on orders evidently drawn for supplies. No part of this sum paid out on Cadott logs was paid for stumpage to contractors who sold by the thousand. As near as I can figure it of the total amount paid to McKinnon jobbers and sundry jobbers, $7,092.27, there was $5,090.59 that was paid out for wages or on lienable claims. The difference, being $2,001.68, was paid

out for timber, for logs. I don't know whether stumpage claims are lienable or not. It was not paid for wages. The next item in the check was $2,627.95 and was paid to William McKinnon. It was paid direct to McKinnon for the amount due him for stumpage. As I understand it the logs which this went to pay for were purchased by Mr. Young at so much per thousand on the contract with Mr. McKinnon and this amount is the balance we found to be due to Mr. McKinnon on account of that contract after everything else had been paid.

Examined by the COURT:

This $5090.59 was on the up river logs.

Cross-examination.

286 Examined by Mr. WICKHAM:

Q. This money that was paid to Mr. McKinnon, was that on his contract that you mentioned in your testimony before, by which he was to retain title until the logs were paid for and on which he filed his claims for the mark?

Plaintiff objects as incompetent, irrelevant and immaterial, not proper cross examination.

Q. I ask you if it was on the same claim?

Plaintiff objects as not proper cross examination. The court sustained the objection to which ruling and decision the defendant duly excepted.

Q. Well was it money paid McKinnon upon the claim which you mentioned in your testimony before for which he had filed in the lumber inspector's office, the mark in his own name.

Plaintiff objects as incompetent, irrelevant and immaterial, calling upon the witness to testify to a contract which is not in evidence and also as improper cross examination and not the best evidence. The court sustained the objection to which ruling and decision the defendant duly excepted.

(WITNESS continued:) This money was paid on the same contract referred to in my previous testimony to Mr. McKinnon. The amount that was paid to sundry jobbers for the purchase price of logs was paid on the same contract with these parties that I referred to in my previous evidence.

Witness excused.

C. W. LOCKWOOD, recalled testified as follows:

Examined by Mr. WICKHAM:

287 I heard Mr. Young's testimony about certain orders that were drawn by him which he testified were for work in the yard in shipping lumber that had been sold to the Waters-Clark Lumber Co. all dated after March 29th. None of those orders go to

make up any portion of the purchase price that the Waters-Clark Lumber Co. paid for the logs. They were not figured in that at all.

Examined by Mr. BUNDY:

No expense of driving was figured in. I don't know what price per thousand was paid for driving.

Witness excused.

J. H. YOUNG, recalled for further cross examination testified as follows:

Examined by Mr. WICKHAM:

I testified on my direct examination yesterday that the 1,000,000 feet of lumber which I had on hand in the winter of 1901 and 1902 was not worth as much as I supposed it was when I made my financial statements. I put it in my financial statement at $10 per thousand. I might have testified in my bankruptcy proceedings that the 1,000,000 feet of lumber was worth $10.00 per thousand. I don't know just what I testified. I wouldn't be positive that I did. In the bankruptcy proceedings I said that lumber was worth that much in the fall, early in the fall. I thought it was worth $10 a thousand what I had in the fall. I testified it was. I supposed at the time I testified in my bankruptcy proceeding that it was. I don't think so yet. I have learned between the present time and the 27th
288 of June 1902 when I testified in the bankruptcy proceeding, that I didn't only get $6.00 per thousand for it. I didn't say that I found that out since the 27th of June, 1902; I didn't mean to say that. I hav-n't found anything out as to its value since the 27th of June 1902 when I testified in my bankruptcy proceeding.

Defendant moves to strike out the answer of the witness previously given that he learned that he didn't get as much for it, as not responsive to the question that was asked, which motion was granted.

When I testified in my bankruptcy proceeding I told them what it was worth at that time. I testified there that was what I had in the fall. When I testified in my bankruptcy proceeding I thought the lumber which I had in the fall of 1901 was worth $10 a thousand. I just merely made a guess at it. I didn't say the testimony that I gave in the bankruptcy proceeding was a guess. I didn't say any such thing. I don't know how much of my testimony is guesswork, a good deal of it. I am not going to lie about that. I had probably sold out the best of the lumber before I sold to the Waters-Clark Lumber Company. I guess so. I don't know. What they got was No. 4 and 5 boards. I don't think the four cars of lumber I shipped from Cadott after I sold the lumber to the Waters-Clark Lumber Co. was all better than No. 4 boards. I don't remember it. I presume I could tell by referring to my books. Not all the lumber in the two car loads that was shipped to Mears and the car load that was shipped to Fish and the car load that I shipped to myself was better than No. 4 boards. I wouldn't say that the most of it was better than No. 4

boards. I think Mr. Clark was the first one with whom I had
289 any conversation connected with the bank about the sale of that lumber to the Waters-Clark Lumber Co. I don't remember the date when I had the first conversation with Mr. Clark about the sale of the lumber to the Waters-Clark Lumber Co. The conversation was quite a little bit before the time that I did sell the lumber. I couldn't say just how long. I have forgotten the day that sale was made.

Q. The evidence shows it was made on the 3rd of March?

A. You mean the lumber?

Q. Yes?

A. I thought you meant about the other. You will have to go over that question. I misunderstood you Mr. Wickham. I thought you had reference to the logs at that time when I spoke. The first talk I had with anybody about the sale of the lumber to the Waters-Clark Lumber Co. was with Mr. Coffin. I couldn't tell you the date when I had the first conversation with Mr. Coffin. It was before it was transferred of course. I couldn't say how long before it was transferred. I won't say at all about it whether it was a week or two weeks because I don't know. I don't think I had any conversation with Mr. Clark about it before the sale was made. The first conversation with Mr. Coffin was in the bank. I don't think I had any other conversation with Mr. Coffin about the matter before I made the sale. I made the sale at the time I had that conversation that night in the bank. It was the first time the matter was spoken of about the transfer from the chattel mortgage to the bill of sale.

Q. And that was the time that the Waters-Clark Lumber Co. gave that note as the purchase price of the lumber was it.

A. I saw the note and signed it. I didn't read it. I didn't know what it was. I didn't look at it. I was just big enough fool
290 not to look at it. I could have looked at it but I merely signed it and passed it over to Mr. Coffin. I didn't know what it was. I didn't really know what it was. The way — came to be in the bank at that time was that I was telephoned to by Mr. Coffin. When I was telephoned to I was in the telephone office at Cadott. He asked me to come to Eau Claire. At that time I didn't know what he wanted of me. I found out when I got to the bank. You bet I did. I didn't find out before I got to the bank. I didn't have any conversation with Mr. Coffin or Mr. Clark or anyone else about the sale of that lumber to the Waters-Clark Lumber Co. before I got to the bank that evening. I saw Mr. Sires scale that lumber at Cadott. I helped him to scale some of it. I was with him on the ground most of the time. My man had the figures that showed the amount of the scale. I think he gave them to me. My man is Mr. Adams. I brought those figures down with me but I have been unable to find them. I don't think I brought them down to Eau Claire with me when I came that evening. They had them I guess. I don't think I had them. I am pretty sure I didn't. I didn't have any knowledge or idea as to what I was going to the bank for until I got there. I agreed with Mr. Clark that night upon the price for the lumber. Mr. Coffin asked me to sign the bill of sale of the lum-

ber and I did so. My office at the time I sold that lumber was at Cadott. That was all the office that I had. I had printed stationery that I kept at Cadott and wrote my letters upon. I didn't keep my office in the Eau Claire National Bank. I think Mr. Clark took some of my stationery down there or somebody did. I didn't take any there. I think he did. They made out plaintiff's exhibit A there in the bank. They had it there. De Witt Clark took
291 my stationery there. I don't know what he took it for. I don't know anything about what he was bringing down my stationery to the bank for unless he was preparing for this occasion. I wouldn't wonder but when he was up there to Cadott he got hold of one of my bill heads and brought it down to prepare for this occasion. He was preparing for it all the time. I made that out in the bank, yes sir. I didn't bring it down with me. Mr. Clark got it in my office. I saw him get it. He got it before that time, I don't know how long. It wasn't a year. I couldn't tell you when it was. I don't know whether I have that kind of ink up at my office. I don't know whether that is the same kind of ink I used in making out my financial statements. This part of my testimony is not guesswork. That is a fact. I think there was another paper besides the bill of sale that Mr. Coffin asked me to sign. I am not positive. I don't know that there was not. I think I signed a bill of sale of that lumber. I think I signed some other paper besides that one and a note as you call it. I am not positive but I think I did. My impression is that I did. In the month of April 1902 I made some improvements on my mill in Eau Claire.

Q. You still expected to operate that mill during the summer of 1902 and subsequent years did you?

A. I did, if they had got the logs as they agreed and given them to me that was the calculation.

Defendant moves to strike out the last part of the answer after the words "I did." The court overruled the motion to which ruling and decision the defendant duly excepted.

(WITNESS continued:) I still tried to and wanted to keep
292 my credit good. I wouldn't have been here had I kept on and got the logs to saw. I think my credit would have still been good. I had not plenty of property to pay all my debts if I had been permitted to carry out my contract. In April 1902 I guess I was friendly with Mr. Clark and Mr. Coffin so far as I knew.

Q. You were still interested at that time and up to that time in keeping your credit good at the bank where you were doing business wer-n't you?

A. I wasn't doing any business with them at that time.

Defendant's counsel moves to strike out the answer. The court denied the motion to which ruling and decision the defendant duly excepted.

(WITNESS continued:)

I wanted my credit good at the Eau Claire National Bank in Feb-

ruary 1902 of course. I didn't think my credit was good there at that time. I said I wanted to keep it good.

Witness Excused.

O. H. INGRAM, called for the plaintiff being duly sworn testified as follows:

Examined by Mr. BUNDY:

I am President of the Eau Claire National Bank and have been for a year or two past.

Mr. BUNDY: We call Mr. Ingram for cross examination under the statutes.

(WITNESS continued:) I have been connected with the Eau Claire National Bank ever since it was organized. I have been con-
293 nected for twenty years I guess. I am also connected with the Rice Lake Lumber Co. and with various lumber concerns throughout the country. I have been during the last two years connected with the Chippewa Lumber & Boom Co. I have been for that time Vice president and one of the directors of that company. As such lumberman and connected with these companies I have not had occasion to sell windfall timber and down timber from time to time. I have known something about the selling price of stumpage generally of various kinds. I had some idea of the value of stumpage. I know the property known as the Old Valley Lumber Co. mill site in this city. I do not know how many acres it consists of. I know they have land on the south side of the road and on the north or west side of the road but I don't know how many acres there are. I presume there were approximately about from 7 to 10 in my best judgment. I have noticed as I drove by it on the road what is left of the old Valley Mill as it was there in February 1902. It is the old shingle mill part of that mill that they used to use. I have had occasion to sell old mill sites of that kind or try to sell them at least, the old Empire Lumber Co. mill and property of that character. In my judgment as compared with our mill site which was on the opposite side of the canal, the old Valley mill site, the land there that the old mill was on and the old shingle mill was worth in February 1902 ten or twelve hundred dollars perhaps. I had offered ours which is larger and a much better site at $1500 and had not found anyone to buy it.

Cross-examination.

Examined by Mr. WICKHAM:

That does not include the machinery in the mill. That is
294 simply the ground. The old mill building I shouldn't think was worth much. I never was in that mill after John Young repaired it and put in a lot of machinery. I don't know anything about what he has in there. The value of such a site depends very largely on whether or not a person needed it for use as a saw mill.

Q. And was the value which you mentioned based upon the assumption that that was its value for use as a saw mill?

Plaintiff's counsel objects as incompetent, irrelevant and immaterial and objects further to the right of defendant to examine this witness when called by the plaintiff for cross-examination. The court sustained the objection to which ruling and decision the defendant duly excepted.

Witness Excused.

W. K. COFFIN, recalled for further cross-examination under section 4058, testified as follows:

Examined by Mr. BUNDY:

I have those notes with me that were read in evidence. (Notes produced.) Generally when I had collected a certain number of time checks and they became due and a note was given for them we delivered back the time checks to Mr. Reagan or Mr. Young or the proper person.

Q. I show you a bundle of time checks with a type written list apparently being the sum total of said time checks and some figures which I think are your figures at the bottom. What was that list for if anything in connection with the bundle of time checks which I show you?

A. To get the total amount of the time checks. When I would turn back the time checks I think likely I furnished such a
295 list showing the manner in which I had arrived at the amount for which a note was given. It would go with the bunch of checks. I can tell from an inspection of those checks when they were taken up. Those were taken up July 2nd, 1900. I don't know where the note is that took up that bundle of time checks amounting to $4,872.02. On looking over plaintiff's exhibit A-1, I can find on that a record of the note which took up the time checks shown me. It is this one and this one (indicating). I can explain that. That amount of time checks amounting to $4,871.02 was paid by a note, partially paid by a note of C. H. Mears & Co. given to and endorsed by Mr. Young, dated June 29th, 1900 due August 28th 1900 for $2035.29. The note did not draw interest and we discounted it $26.22 and the balance of the time checks was paid by a note given by Mr. Young and endorsed by Mr. Reagan dated July 2nd 1900 payable on demand amounting to $2861.95 I don't know where that $2,861.95 note is. It may have been paid. These time checks that are marked "Paid June 7th 1902" we did not hold for collection merely, not the most of them at least. It is not true that the way we took those time checks was simply to take them and hold them for collection and never marked them paid or charged them off on our books as paid until we actually got the money or a note for them and until that time simply held them for collection for Mr. Reagan or Mr. Young, Mr. Reagan rather. The same stamp would be used on paper we held for collection and paper that we owned if it was afterwards paid. The word "Paid" would be stamped on the face. I think we stamped the paper which we hold for collection for other people in exactly the same way and same place as we did this paper

that is paid. These time checks we had been accumulating
296 up to the 6th of June, that had been received by us at various times as shown by our serial number. The money advanced on them was discounted and the balance turned over to the one who presented it at the time it was presented to the bank. We paid out money on these time checks as they came in. We paid the face less our usual discount. They were not stamped at the time we paid them because they were not finally paid then. So far as the bank was concerned the bank didn't pay them. If we discounted them or if we cashed them over the counter or if we took them from any source I wouldn't mark them paid until they were paid by somebody to the bank. If they were over due we might hold them as over due paper until they were in fact paid. I think all of that lot were due April 15th. I was at one time a nominal stock holder in the Dells Lumber & Shingle Company that bought those logs. I was at the time this sale was made. I don't think Mr. Ingram was a stock holder in that company nor Mr. Lockwood nor Mr. Clark. I was the only officer of the bank who held any stock in the Dells Lumber & Shingle Co.

Examined by Mr. WICKHAM:

I did not hold anything more than a nominal holding in the Dells Lumber & Shingle Co.

Examined by Mr. BUNDY:

I held some stock so that I could be an officer of it. I was treasurer of it and I was a director too.

Witness Excused.

JOHN C. FINNESSY, called for the plaintiff being duly sworn testified as follows:

297 Examined by Mr. BUNDY:

I live in this city and am at present City Clerk. As such city clerk I have the custody of the record of chattel mortgages and conditional sales etc. I have that record with me.

Q. Will you please refer to your record of chattel mortgages and sales and tell us what chattel mortgages and conditional sales or other securities were filed in your office against John H. Young since 1900?

A. John H. Young, Valley Lumber Co., 1901 August 24th, $2500, date of filing, August 24th 1901. That is a contract. That is not satisfied of record. I have also the following record, "John H. Young to Eau Claire National Bank, 1902 February 10th $11,100 date of filing Feb. 21st, 1902, chattel mortgage, released and taken from file March 20th 1902 by C. W. Lockwood. John H. Young to Eau Claire National Bank, 1902 February 10th, $15,900 filed February 21st, 1902, chattel mortgage. That has not as yet been satisfied. It stands there yet as a chattel mortgage. That is all that I see upon the record. That is all of the liens, conditional sales contracts, mortgages and other documents of record against John H.

Young filed in the office of the city clerk in the city of Eau Claire from the 1st of January up to the present time.

Witness Excused.

Plaintiff's counsel offers in evidence exhibits C-1 together with all the endorsements thereon.

It is admitted that exhibit C-1 is the contract referred to by Mr. Finnessey from the Valley Lumber Co. and the same contract that Mr. Young testified was made when he purchased the mill property at Eau Claire.

Plaintiff Rests.

298 Defendant's counsel moves the court at this time for a nonsuit. The court overruled the motion to which ruling and decision the defendant duly excepted.

W. K. COFFIN, recalled for defendant, testified as follows:

Examined by Mr. WICKHAM:

I have been the cashier of the Eau Claire National Bank over twenty years. I have known John Young nearly all that time. I knew him soon after I came here. I have general charge and supervision of business for the Eau Claire National Bank and have had for several years. I am the person who passes on the credit of customers who desire to borrow money from the bank. In passing on the credit of a customer who desires to borrow money I sometimes take financial statements from the borrower as to his assets and liabilities. That is a matter of frequent occurrence. It is a general rule. The purpose of obtaining such financial statement is to know their financial condition. Such a statement is not of any value if it is not made truthfully. Unless it was attempted to be made correctly it would be of no value. Aside from the financial standing of the borrower we consider in passing on the question of whether or not we will loan money to a borrower, his integrity and honesty. The question of his honesty and integrity is always considered in passing on the question of whether or not we will loan him money. We would not loan money to a person that we did not believe was honest and his integrity good. When Mr. Young made these different financial statements to the bank that have been produced here and marked for identification by the reporter, I looked over those statements.

299 I believed them to be true. I did not know of any fact to the contrary. The statement dated December 6th, 1899 marked exhibit 1 was one of the financial statements furnished me by Mr. Young. The occasion of Mr. Young giving me that statement was that he wanted to borrow some money. He did borrow some money soon after that statement was given. I remember the amount. It was $2,000. He borrowed it on his note. As to the item in the statement "mill at Cadott clear $4,000," he told me that he owned the mill and that it was worth $4,000 and there was nothing against it. He told he that he owned the mill at Paint Creek and 40 acres at Paint Creek and that it was worth $3500 and that it

was clear except $200 and that he had $1,000 of insurance on it. He told me that he owned 1,000,000 of lath and two thirds of them were No. 1 and one third No. 2 and that they were worth $3,000.

Examined by Mr. BUNDY:

I am reading from the statement marked exhibit 1.

Examined by Mr. WICKHAM:

He told me he had 200,000 feet of lumber worth $1400. He told me that he owed Mr. Reagan $400, Mr. Brooks $200, the Phœnix Manufacturing Company $200, for labor $1200 and the Empire Lumber Co. $100, a total of $2100. He told me at that time that he had eight or ten million feet of timber.

Examined by Mr. BUNDY:

That is in the statement. The statement is as it was at the time Mr. Young gave it to me. I have not been writing anything on it since it was in court.

Defendant's counsel offers in evidence exhibit 1 which was received in evidence.

300 Examined by Mr. WICKHAM:

Exhibit No. 2 dated February 25th, 1901 is one of the financial statements from Mr. Young that he gave the bank at that time. The information of which that statement is made up was given to me verbally by Mr. Young. It was written down by me and signed by Mr. Young. I asked him to give it to me, a statement of his assets and liabilities. I think I put the details down as he stated them to me and talked with him about each item undoubtedly. I probably did not talk with him about each item before the amount was put down.

Q. Well what I mean by that; do you mean you did not discuss the item before it was put down; what I want to know is did you ask him about his property and did he tell you about each item before you put down that item?

A. Yes sir that is the way it was done. He gave me each item and I put it down as he gave it to me. That statement includes what he was owing the bank. The total amount of property of Mr. Young at that time as he gave it to me, the total value was $53,964. The total amount of his debts as he gave it to me was $23368.28. I believed at that time that he had property of the amount and value as shown by that statement. I did not believe at that time that he owed any debts except what was shown in that statement. I did not know anything about any debts that he did owe except what appears on that statement. The value of his property at that time over and above his debts as they appear on that statement, the balance is $30,595.72.

Defendant's counsel offers in evidence exhibit 2 which was received.

301 Defendant's exhibit No. 3 dated July 12th 1901 is one of the financial statements given me by Mr. Young on that date.

Defendant's counsel offer in evidence defendant's exhibit 3 which was received.

Defendant's exhibit No. 4 dated July 5th, 1901 is one of the financial statements given me by Mr. Young.

Defendant offers exhibit No. 4 in evidence which was received.

(WITNESS continued:) The portion of the statement written in blue ink is written by me at the time that Mr. Young gave me the statement in his presence.

Examined by Mr. BUNDY:

I think that all the writings that are on these statements in blue ink are mine. I am not sure. I don't remember but I think so. They were written when Mr. Young gave me the statements. This statement does not appear to be signed by Mr. Young. It was not sent to me by mail.

Examined by Mr. WICKHAM:

In this statement of July 5th, 1901 being defendant's exhibit No. 4 I figured up the amount of the lumber including the pine and the hard wood and the lath and the shingles as shown by that statement. The amount of those items is $23,850. There is in the statement a list of the claims which were due Mr. Young from lumber, shingles etc. that he had sold to customers. That figures up $8,570.93. The way I came to write the addresses of those persons who owed for lumber, shingles etc., upon the statement was that I asked Mr. Young where the people lived and he told me. The two
302 amounts that I gave the accounts and the lumber, lath and shingles, amount to over $32,000. In addition to that are the mills, and the timber and working outfit. The amount of his debts outside of what he owed the bank as shown by the statement was $1,173. That amount was originally written $1073 by Mr. Young and was changed to $1173. The $100 difference came in in the amount that he owed J. A. Smith, that was changed from one to two hundred Dollars. That is in my handwriting, the figure 2 over the 1. The circumstances of that change being made were that he found out that he owed him more than the $100 and he told me about it at the time and that was the cause of my changing it. The amount he was owing the bank was entered at the foot of the statement in my handwriting. At that time I did not know of any other debts that Mr. Young owed other than those mentioned in that statement. Mr. Young told me at that time something about the insurance. He told me that he had $19,000 of insurance. I find that I made a memorandum of it at that time. He told me something about what payments he would make to the bank in the future. He said he could pay $2500 per month. He said he could get the money from his accounts and the sale of lumber, lath and shingles. Defendant's exhibit 5 is one of the statements that Mr. Young gave me as to his assets and liabilities.

Defendant offers exhibit No. 5 in evidence. Exhibit No. 5 was received in evidence.

It is understood that all these exhibits that are offered in evidence the pieces that are pinned on them are not offered and received.

(WITNESS continued:) Exhibit 6 is one of the financial
303 statements that he gave me at the date of it October 11th 1901 I added to that the debts of claims of the bank against Mr. Young which the bank held. That part of it which is in blue ink is in my handwriting. At that time I did not know of any debts which Mr. Young owed that do not show on that statement.

Defendant offers in evidence exhibit 6 which was received by the court.

The statement dated November 19th, 1901 marked defendant's exhibit 7 is a financial statement which Mr. Young gave me as a statement of his assets and liabilities at the time of its date. On that statement the portion in blue ink is in my handwriting. That portion was written at the time he gave it to me. He gave me the information as to those addresses that I wrote there. At the bottom of the statement the portion in blue ink is in my handwriting. The part which reads "Eau Claire National Bank, $4298.83" and "Reagan $16,685.19" included what the bank held at that time against Mr. Young. The bank also held the item of Dells Milling Co. $50.00. The bank held those claims in those three amounts that I have mentioned. Those amounts were added to the statement at that time. The item of the liabilities reading "J. E. Reagan time checks $383" is in Mr. Young's handwriting. He told me in regard to those time checks that they were some that we didn't hold and that Mr. Reagan held. The statement "Mills Supply Co. $376" is in Mr. Young's handwriting. That debt was evidence by a note given by Mr. Young. The figures on the slips that are pinned to the statement are figures that were made by me at the time when I received the statements.

Q. What was the occasion of your making those figures?

304 Plaintiff objects as incompetent, irrelevant and immaterial and mere self serving acts of defendant, not evidence in its behalf.

The COURT: If it was not part of the transaction between witness and Mr. Young I should think it would be objectionable.

Mr. WICKHAM: I do not offer them or ask him what they contain. I ask him what the purpose of it was.

Plaintiff objects to his testifying as to the purpose of something that he did.

The COURT: If you do not expect to offer them I do not think it will be material unless he is examined by counsel on the other side on the subject. To which ruling and decision the defendant duly excepted.

(WITNESS continued:) From time to time upon receiving these statements I looked them over and made figures and computations for the purpose of ascertaining as near as I could the financial condition of Mr. Young.

Defendant offers in evidence defendant's exhibit No. 7 which was received.

Defendant's exhibit 8 dated January 1st 1902 is a financial statement that Mr. Young gave me at that time. He mailed that one to me. There is attached to it the letter that accompanied the statement. I didn't make any figures on that one.

Defendant offers in evidence defendant's exhibit No. 8 also the letter attached to it. Said exhibit 8 and letter attached to it received in evidence.

305 Mr. Young on or about February 1st, 1902 gave me a financial statement dated February 1st 1902 marked plaintiff's exhibit L. No portion of the pencil marks which are now on that paper were on the paper at the time that Mr. Young gave it to me. Those were all put on since April. These pencil marks and figures on exhibit L were all put on since the trial with the exception of the footings. This statement I think was handed to me by Mr. Young but I won't be positive. I remember the fact that I had a talk with Mr. Young about it.

Q. On the second page of the statement appears in the left hand column a column of names and figures and there also appears a column of names and figures on the lower part of the right hand column. I will ask you what if anything Mr. Young told you that that consisted of?

A. Accounts due him. In the upper right hand corner of the statement appears a list of other names and figures. He told me that consisted of accounts that he was owing. The amount of the accounts due him according to this statement is $4607.75. The amount of the accounts that he was owing according to the statement was $1,328.77. I did not at that time know anything about any debts that Mr. Young was owing aside from what appears on that statement and what he was owing the bank.

Q. The last two sheets of the statement of February 1st 1902 contain a list of names and amounts. What if anything did Mr. Young say to you that that was a list of?

A. The amount due on wages, names of men and the amounts due. Those figure up $822.59. Those were wages for which time checks had not been issued at that time.

Defendant's counsel offers in evidence statement of February 1st, 1902 marked plaintiff's exhibit L but does not offer the
306 pencil memoranda upon the exhibit. Said exhibit L received in evidence.

The claim of C. W. Cheney & Co. of $82.50 which appears on this statement of February 1st, 1902 among the list of debts was paid in an order drawn by Mr. Young and which was taken up by the bank. The order shown me dated March 12th 1902, C. W. Cheney & Co. $82.50 payable April 1st 1902 signed by John H. Young is the order which paid that claim. That is one of the orders held by the bank on March 29th 1902. Young's number on that order is 753. The bank number is 47,868. The item J. A. Smith $300 in the statement of February 1st appearing among the list of debts,

Mr. Young said was for insurance. Mr. Smith was engaged at that time in the insurance business in this city. He was agent for the company that issued insurance policies upon Mr. Young's mill and lumber. I know of that debt being paid to Mr. Smith. It was paid at the time the insurance was collected or about that time. I remember the circumstances of Mr. Young paying $2,000 in currency and afterwards paying $1,000 in April 1901. At that time Mr. Young said that he got that money to make those payments from the Northwestern Lumber Co. for shingles. He told me first that he could get and would get a payment on his shingles and he afterwards brought in his money $2,000 and told me he had got it from the Northwestern Lumber Co. for shingles. I can tell you the date that he paid that $2,000. It was April 26th, 1901 He paid the $1,000 April 27th, 1901. I think that $1,000 was also paid in currency to me personally. That $2,000 payment was applied on a note for $2576.60 dated September 15th, 1901.

The $1,000 was used to pay up the balance on that note
307 and the rest of it was endorsed on some other note. He told me he got the $1,000 that he gave me on the 27th from the Northwestern Lumber Co. He did not tell me that he borrowed that money or any money from Mrs. Moon. He never at any time told me that he had borrowed money from Mrs. Moon. The first I heard about there being any claim in favor of Mrs. Moon against him was when you showed me his schedule in bankruptcy, when you showed me the copy that you had obtained from the trustee in bankruptcy. That was about the 12th of June 1902. That was the first that I ever heard that there was any such claim or any claim whatever in favor of Mrs. Moon against John H. Young. On March 29th 1902 I did not know of any such debts that Mr. Young owed aside from what he owed the bank and the time checks and liens that were out against the logs and aside from the debts that he mentioned in the statement of Feb. 1st 1902 which then remained unpaid. I had never heard of there being any other debts aside from those I have mentioned. I did not believe there were any other debts aside from those I have mentioned. I heard Mr. Young's testimony to the effect that he showed me some contracts or contract with the Chippewa Lumber & Boom Company for stumpage. He never showed me any such contract or contracts. I never saw any such contract or contracts until the trial of this case here. He had told me that he had purchased stumpage from the Chippewa Lumber & Boom Co. He did tell me of someone else from whom he purchased timber. He said he purchased timber from Laird-Norton. I do not remember of anyone else that he mentioned. Mr. Young showed me some of his stumpage in the fall of 1901. It consisted of standing timber and some down timber. He claimed that he owned it. He said that he owned
308 it. He told me that it was paid for. He told me that the value of the whole of his timber was worth more than the estimate that he put upon it in his statement. I talked with him about that timber in looking over the written statement. I don't know that he gave any reason why it was worth more than that.

I don't think he stated what it was worth because it was increasing in value--worth more than what he put it in at in his statement. He said he put it in in his statement at a conservative figure and he claimed it was really worth more. He said that he intended to manufacture this 2,000,000 feet that he claimed to have in February 1902. He said that he intended to manufacture it at Eau Claire. He told me he was going to saw his logs and manufacture them into lumber in Eau Claire, including the logs that he put in in the winter of 1901 and 1902. He said the purpose of building his mill in Eau Claire was for the purpose of manufacturing lumber. He told me that he would not manufacture anything at Paint Creek after that time except a few logs that were not worth hauling to the river and running to Eau Claire. He said he would make shingles of those.

Q. Now Mr. Coffin do you know of your own knowledge whether or not machinery had been taken from the Paint Creek mill and brought to Eau Claire before the fire?

A. I believe it had been. I didn't see it moved.

Plaintiff moves to strike out the answer as not responsive.

The court granted the motion to which ruling and decision the defendant duly excepted.

309 (WITNESS continues:)

Mr. Young told me when I was up there in the fall of 1901 that all of the machinery in that mill was to be moved to Eau Claire—had been or was to be—with the exception of what he needed there to cut up these poor logs into shingles and he told me after that that all of the machinery except what was needed for cutting up those shingles had been moved to Eau Claire. I had a conversation with him about the loss he sustained by the fire, after the fire occurred. He told me that the insurance covered the loss. He did not say to me that his loss on account of that fire was $7,000. Mr. Young did not tell me at any time that his right to remove the timber which he had on that land expired on May 1st 1902. He never said anything to me to that effect. I had no information to the effect that his right to remove it expired on May 1st 1902 at any time prior to this trial. When Mr. Young gave me the financial statement dated Feb. 1st 1902, he did not say to me that it was made up hastily, was just a guess, that he had guessed at most of it. He told me nothing to that effect. When he furnished me any financial statement he did not say it was just a guess or anything to that effect. He did not say it was not reliable because he couldn't tell. It was just merely a guess. Mr. Young did not say to me that he was going to get some money from John Moon and that when he got it he would give it to me. I heard Mr. Young's testimony in which he said the first time it was suggested that he give chattel mortgages was the day after the fire. That was not true that the first time I talked with him about the giving of the chattel mortgage was the day after the fire. When I talked with Mr. Young about giving the chattel mortgages

310 he did not say to me that it wouldn't be fair to do that and leave the rest of the creditors, that he did not have enough to

pay all that he owed by giving that. He did not say anything to that effect. I never said to Mr. Young that I had a new idea and that if he would sign those mortgages I would give him the logs to saw and that would give him a chance to pay up the balance of his creditors. I never made any such statement to Mr. Young. I never said anything to him about having any new idea about giving him the logs to saw. Mr. Young never told me at any time that he was owing Mrs. Moon and the Valley Lumber Co. and that there were lots of other debts and that he was owing Mrs. Moon $6,000. He never made any such statement to me or any part of it. I never asked Mr. Young to give a bill of sale of the lumber. I never said to him at that time that the chattel mortgage was no good and the creditors could bust it or anything to that effect. I did not say to Mr. Young at or about the time that he sold the logs to the Waters-Clark Lumber Co. that if he would sign the bill of sale that he should have the logs according to the agreement that he made with Mr. Clark. I had a conversation with John H. Young as to what time checks the bank held that had been issued by him some time about or prior to February 1st, 1902. I had such conversation on several occasions about or prior to Feb. 1st. Every time that we looked over a statement I showed him what we did have and generally made a memorandum of it, sometimes made a memorandum of it right on the statement that he was making. I asked him every time I talked with him about the matter if there were time checks outstanding that we did not hold. With one or two exceptions, two or three exceptions perhaps, when he told me what time checks were out he said that we held them all. I only remember now one instance of some time checks that were out. In that instance that I refer to the time checks that he said were out appeared on the statement. On February 1st 1902 I did not know of any other time checks that were out except those held by the bank. He told me there were none except those held by the bank. I probably first asked Mr. Young to give chattel mortgages Feb. 7th or 8th. I remember that it was before the mortgages were drawn. When I asked him to do so he agreed to do it, promised to do it. It was after he promised to do so that I asked you to prepare the mortgages. At the time the mortgages were given on the logs and lumber I did not know anything about the up river logs being marked with the same mark. I don't think that I knew anything about the up river logs being put in at all prior to the time when Mr. Lockwood went to Cadott in February. I may have heard that he had bought some logs up river but I don't think that I did before Mr. Lockwood went to Cadott. I would think it was a week or ten days before the sale of the logs that I learned that the up river logs were marked with the same mark as the Cadott logs. I should think a week or ten days before the 29th of March that I learned they were marked with the same mark. When I learned that the logs were marked with the same mark as the Cadott logs I had a conversation with Mr. Young about the matter. I asked him about that and he told me he was having some logs put in up above and they were marked the same as the lower logs and I told him that that left the matter in a very dangerous and unsatisfactory condition, that

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something must be done to get both lots of logs in the same ownership. When I first talked with Mr. Young about the upper logs I had not heard at that time about McKinnon making a claim on the
312 logs or recording the mark in his name. I think it was after the sale to the Waters-Clark Lumber Co. when I first heard that McKinnon had recorded the mark. Mr. Young did not tell me whether or not the upper logs had been paid for. He did not tell me they had been paid for at the time I refer to when I talked with him about their both being marked with the same mark. I think he told me that they had not been. I had a conversation with him about the necessity of making provision to drive the logs. It was pretty near time for the drive and I urged him to do something and do it quickly because the drive must be looked after. In a conversation with Mr. Young before the 29th of March I told him the bank would not advance the money to pay for the upper logs and carry on the drive. That was the conversation in which I talked with him about the necessity of selling the logs to some one. He said he would sell the logs before March 29th. He told me of someone he had been talking to about selling them. He told me he had talked with John Moon about buying them. I am not sure that he told me of anyone else before March 29th.

Q. Well did he talk with you or tell you of any talk that he had with the Waters-Clark Lumber Co. or Mr. Clark?

A. I thought your question before was besides Mr. Clark or the Waters-Clark Lumber Co. He told me several times that he had talked with Mr. Clark about it prior to March 29th. Prior to the sale of the lumber to the Waters-Clark Lumber Co. I have no recollection of having telephoned Mr. Young at Cadott and ask him to come to Eau Claire, and that Will Cameron who worked at the bank met him at the train and asked him to come to the bank. I did
313 telephone him at Cadott at different times on different matters. I do not remember sending Will Cameron to meet him at the train at any time. I suppose Will Cameron is in Columbus, Ohio. He is not in our employ any more. Prior to the sale of the lumber to the Waters-Clark Lumber Co. or at the time of the sale I did not have any negotiations whatever concerning the sale of that lumber with the Waters-Clark Lumber Co. I did not personally have anything to do with the making of the bargain between Young and the Waters-Clark Lumber Co. as to the sale of the lumber or the sale of the logs. There was no conversation or agreement of any kind between the bank and the Waters-Clark Lumber Co. either as to the sale of the logs or the lumber or that the Waters-Clark Lumber Co. should take title as trustee for the benefit of the bank. At the time the mortgages were given neither the notes or the time checks or any part of them were cancelled or surrendered up and delivered to Young. I mean those that the bank held at the time the mortgages were given. The notes that were given with the mortgages were never entered on the books of the bank as assets of the bank. The notes that were given with the chattel mortgages were not received in payment of any notes or time checks that the bank then held. At the time the chattel mortgages and notes were given I told Mr. Young we would take the mortgages to secure the indebtedness

we then held, obligations of his that we then held, and those that we might take after that time, and that we would hold the mortgages and the notes with them as security. I told him we would hold them as security for what we then held and what we agreed to advance.

I don't remember his language in reply to that. He assented
314 to it, understood it, understood it that way. That was the way it was done. Those payments that were afterwards made were all applied upon the notes and obligations that the bank held instead of being applied upon the notes that were given with the mortgages. I did not have any conversation with Mr. Young either at the time that the mortgages were given or afterwards up to March 29th about paying his other creditors, that is about his paying his other creditors or how he expected to pay them. Mr. Young told me when I talked about this statement of February 1st, about the financial standing of the persons who owed him as to whether or not the claims were collectible. He told me they were all good. He told me regarding one of the claims that it was slow. I don't remember the name of that claim; it was for $960, a party that had owed him some four or five thousand dollars at one time. It was M. M. Boyles. I believed that the statements made in his financial statements of Feb. 1st were true.

Q. Your attention was called this forenoon Mr. Coffin to a claim of Cheney & Co. of $82.50, that it was paid by the bank in March 1902. Do you remember of other claims that the bank paid for Young during the latter part of February and up to March 29th for supplies.

A. In that time we paid time checks that were given for supplies. I haven't the figures as to the amounts here. I haven't made any computation I don't think. I remember there were several time checks of that kind that purported to be given for supplies that I paid during that time. At the time I paid those different time checks I believed that Mr. Young was solvent and had sufficient property to pay all his debts. If I had not so believed there was no reason that I know of why I should pay those time checks for supplies.

315 I have made a computation as to what property I believed Mr. Young had on March 29th after selling the logs to the Waters-Clark Lumber Co. I don't think I have the computation here.

Examined by Mr. BUNDY:

The computation I was looking for I made since the trial commenced.

(Witness makes computation.)

Examined by Mr. WICKHAM:

Q. What property did you believe he had left after selling the logs to the Waters Clark Lumber Co., that is what you believed at that time, state the items Mr. Coffin?

A. I believed he had lumber or the proceeds of it worth.	$5,000
That he had lath worth.....	600
That he had shingles worth.....	900

Or the proceeds of it or accounts for the sale of it.

I believed that he had saw mill or mills worth	5,000
I believed that he had pine stumpage worth	6,000
I believed that he had hard wood timber worth	900
I believed that he had land worth	280
I believed he had a logging outfit worth	2,100
And accounts amounting to	4,600
Making a total of	$25,380

Q. Well in your figures of $5,000 for the mills did you intend to figure the mill in Eau Claire in that?

A. Only partly so at that time. He had moved some of his machinery which he called part of his two mills into the mill here and that part of the machinery would be accounted for in that valuation.

Q. Did you intend to include other machinery that he

316 put into this mill at Eau Claire?

A. That he hadn't owned on Feb. 1st?

Q. My question now relates to March 29th?

A. Yes. The way I arrived at those figures I thought he had the machinery complete equipped for two mills except the little machinery, a small amount of machinery that was burned at Cadott, at Paint Creek.

Q. Well in your estimate of $5,000 for the mills, did you include the land at Eau Claire upon which the mill was situated, in your estimate of what you thought he then had; was that in addition?

A. I don't think he made any reference to me about the lands on March 29th but he had been fitting up the mill here. He had been fitting up the mill here and he had practically all of the machinery that he ever had as I understood it. In my estimate I did not include anything for the house and lot where he lived, in the figures I gave as to what I supposed he had at that time. I knew he had a house and lot in Eau Claire where he had been living. I was acquainted with the property. I never was in the house. I had never heard of the mortgage on the house prior to the time when Mr. Young went into bankruptcy.

Cross-examination.

Examined by Mr. BUNDY:

I testified that I was the general managing officer of the Eau Claire National Bank during the time that these transactions with Mr. Young were had. I was the one who supervised the loans and the credits and the amount of credit that was to be extended to customers in the bank. I did the business as to loaning this man the money; loaned the bank's money to Mr. Young.

Q. If that was a bad loan you and you alone are responsible for it.

317 Defendant objects to the question as calling for a conclusion.

The court overruled the objection to which ruling and decision the defendant duly excepted.

Q. That is the fact, you assumed the responsibility of this loan if it was a bad loan and you are to blame for it and no one else?

Defendant objects to the question as to who is to blame for it. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. No sir. I wouldn't say that. So far as the bank is concerned I did the business as to extending this amount of credit to Mr. Young without the active co-operation of any other member of the bank. I am the man that allowed Mr. Young to get some $25,000 of the bank's money on credit. When I stated it is a general rule to take property statements from men that borrow money at the bank I meant just that.

Q. Do you mean to say that most of the people to whom you loan money, that you require them to make property statements?

A. Yes sir I would say that, with most of them we do. The purpose of these statements is so we will know what they have. If the statement is satisfactory to me I make the loan otherwise not.

Q. When you get a satisfactory statement on the 1st of May of the ordinary customer do you ask them for another on the 1st of June, of a customer that you consider perfectly good and are satisfied to make the first loan; do you ordinarily require another one of the 1st of June?

A. I should say we would if they were asking for further credit.

Q. If their line of credit was to be extended then you
318 would want a further statement of their property?

A. Yes sir. I would expect the property statement to be sufficiently good before I would make the increase.

Q. And you would want another on the 1st of July if they wanted some more money, about your ordinary customer I am speaking?

A. That might depend and probably would depend largely upon the character of the business they were doing, whether it was changing or not.

Q. What would you say as to most of your good customers, people that you think are perfectly solvent; do you ordinarily ask them for a statement on the 1st of September October, November December, January and February as you did from Mr. Young?

A. Not from most of them no sir. When I take these statements from customers that I consider good, I compare one statement with the one before and see how the business is running.

Q. Well if his indebtedness is increasing and his assets are not increasing are you satisfied with that kind of a statement or would that make you a little suspicious?

A. Well it might be suspicious and might not.

Q. And if his indebtedness was increasing from month to month and his assets were decreasing from month to month what effect would that have upon you as a banker Mr. Coffin in forming your judgment?

A. If they were getting together pretty rapidly it might require explanation. If a customer of ours to whom we were loaning our depositors' money made us statements from month to month and

every statement showed that he had less assets and more debts it might affect my confidence in the ability of our customer to pay.

319 Q. Well now Mr. Coffin, as a matter of fact, under these conditions if they had existed for four or five or six months, wouldn't you as a prudent banker think it was time to call in that loan?

A. Yes under those conditions. It would suggest to me as a prudent banker the necessity of making a most diligent inquiry to determine whether or not the loan was good.

Q. If a man, one of your customers, makes you a statement Mr. Coffin as to his property and some one item on that statement you know is not a fair statement of it, not correct, you naturally lose faith in the whole statement do you not?

A. If I thought it was intentionally incorrect certainly.

Q. I think you testified that an untrue statement was of no value to you in determining the amount of credit?

A. If it was given intentionally I should say so yes sir.

Q. Well if you knew as a matter of fact that he was listing property for five or six thousand dollars and it had no value even though you didn't think it was intentional, would that in any manner affect your belief in the correctness of his statements?

A. Certainly if I knew it had no value, whether he intended it or not. If a man should make such a statement as that, carrying property at a large amount that I knew had none or little value, I should not think I would pay very much attention to his statement. I testified this morning that Mr. Young told me at the time he paid me $2,000 in currency which I applied on one note and $1,000 in currency which I applied on another note, part of it, that Mr. Young said he had got that money from the Northwestern Lumber Co.; I shouldn't say that that was an unusual transaction to occur

320 with a bank cashier to have a man pay so large an amount as that in currency, a regular customer. A good many such amounts are paid by check a very large majority of them. I don't remember any other particular time that John Young ever paid me any considerable amount in currency. I didn't testify on the stand the other day that he never paid me any such amount in currency at all. I testified that I had no recollection of his making any such payment to me in currency. It was after you had asked me to make a transcript of our loan and discount sheet that my recollection was refreshed. During the spring on 1902 and winter of 1901 Mr. Ingram was president of the Eau Claire National Bank and has been for a long time past. During the past five or six or ten years I have had more or less personal connection with lumber companies as stock holder or officer. I am stock holder and treasurer of the Rice Lake Lumber Co. I don't remember any other lumber companies except the Dells. During the last few years I have had no experience at all in the buying and selling of stumpage and timber.

Q. You said that he showed you some stumpage up there at

Cadott and as to seeing some standing timber; about what fraction of one per cent. of the whole that you saw was standing?

A. I hav-n't the least idea, what I saw was mostly standing. I don't mean that it is virgin forest uncut land. I should not think that the large majority of it was down timber. What was standing was live timber, not dead timber. It was cut over land most of it, largely I should say that I saw. I talked over with Mr. Young this stumpage that he had there. He pointed it out to me and we talked it over. I think he said what he thought it was worth per
321 thousand. He was showing me around over the property.

Q. The purpose for which you were there was for the purpose of determining whether Mr. Young was good for the debts that he owed you?

A. No not primarily. The purpose was to look over the timber that he was proposing to put in that winter and whether or not we would let him have money to put in that timber.

Q. You of course was naturally interested in the quality of the timber he was going to put in and his ability to handle the deal were you not?

A. That is what I was interested in.

Q. You were looking out for the purpose of determining partially whether it was advisable to loan him any money?

A. Yes that was the object. I collected the insurance on the Paint Creek Mill as assignee. The insurance company paid the amount of the insurance, total loss of the insurance. I do not remember of offering to sell the logs formerly owned by Mr. Young to Mr. Gillett of the Dells Lumber & Shingle Co. on March 17th 1902.

Q. You heard Mr. Gillett's evidence that you did offer him, did you not?

Defendant objects as not the testimony. The court overruled the objection to which ruling and decision the defendant duly excepted.

—. I mean to testify that I did not offer to sell the logs to Mr. Gillett or his company prior to the time when they were sold to the Waters-Clark Lumber Co. I told Mr. Young that we wouldn't put any money into those up river logs. That was after I had discovered about those up river logs, after I discovered he had been buying up river logs. I don't think I discovered that he had been buy-
322 ing up river logs before I took the security on the down river logs on Feb. 20th.

Q. Hadn't Mr. Lockwood been up to Cadott the week before and discovered all about those up river logs, from the 7th to the 10th of February?

A. Oh yes that he was buying some up river logs. I knew he had bought some up river logs and I knew that at the time I took the mortgage on the down river logs. I didn't know anything about whether he owed on those logs.

Q. You refused to advance him any money to pay for them didn't you Mr. Coffin?

A. Not when we took the mortgage.

Q. But before that?

A. No sir.

Q. Didn't you at the time when Mr. Lockwood was at Cadott on Feb. 7th to 10th, 1902 know that Mr. Young had only paid $900 on all the up river logs?

A. I think I knew that he had paid $700 or $900. I supposed that he owed for the balance.

Q. As I understand your evidence it is that after you had taken a mortgage on the down river logs you urged Mr. Young to transfer all the logs to some one person to prevent the up river logs which were not included in your mortgage from becoming mixed with the down river logs that was included. Is that correct?

A. Partially so. I did not wish that done for the purpose of protecting our security that we then held on the down river logs. I was not afraid if they got mixed our security would be gone. I did not think our security would be just as good if they were mixed as otherwise. I did think if those up river logs got mixed with our logs it would affect our security. That is not the reason I urged Mr. Young to transfer them to some one who would hold title to both
323 lots. I had an interest in his paying us what we had in the lower logs and I urged him to sell those logs and the upper logs too to somebody who would own them all.

Q. And he would pay you what you had against the down river logs?

A. If he sold them I supposed we would get our pay certainly. I mean to say that the Eau Claire National Bank and I as its officer had nothing to do with transferring those logs to the Waters-Clark Lumber Co. or causing them to be transferred. It is not true that the Waters-Clark Lumber Co. took those logs at my instance and at my request for the purpose of selling them and paying me the debts so far as it would pay it secured by our mortgage. It is not true that the Waters-Clark Lumber Co. have held those logs from the time they took them for the Eau Claire National Bank. Every particle of the business which arose out of the Waters-Clark Lumber Co. buying and selling those logs and lumber has not been conducted at the Eau Claire National Bank. The accounts have not been kept on our books. I don't know who has kept them Mr. Lockwood has not been the one who has made it his personal business to attend to the accounts and the business growing out of that transaction. He has had something to do with it for Mr. Clark. It was not the agreement made between me as an officer of the Eau Claire National Bank and the Waters-Clark Lumber Co. that both the logs at Cadott which were embraced in our mortgage and the logs above which were not were to be sold by them and the proceeds after paying the labor claims, turned over to me. It is not true that that is just what was done.

Q. Why Mr. Coffin isn't that note which was turned over to you of $2314 or $2514—don't you understand that that is the net
324 proceeds of all the logs?

A. I understand it is yes.

Q. And that was turned over to John Young by the Waters-Clark Lumber Co. and by John Young turned over to you at the same

time, at the same identical moment the bill of sale was made, wasn't it?

A. Probably not the same moment.

Q. The same transaction and at the same time?

A. No sir. I don't know how long after those were sold it was that I got the note.

Q. Don't you know as a matter of fact that the signing of the bill of sale and Mr. Young's indorsing that note was at the same time and with the same pen and the same transaction?

A. I don't know about that. It was not turned over to me right then and there. It was probably turned over to the Eau Claire National Bank soon after. It was not at the same time. The note was delivered to me by Mr. Young. It was not delivered by Mr. Young in the room right at the time he signed the bill of sale. It was in the front office that the note was delivered to me. I suppose the bill of sale was signed in the back room. I was not present—came from the back room to the front room and turned that over to me. That is what I mean as to not being the same transaction. He walked from one room to the other. He brought it to me in the front room. I don't know what he did in the back room.

Q. You understand that note represents the net proceeds of the logs do you not after they had deducted the labor claims against them?

A. And the cost of the logs. That note I took and should have indorsed it on Mr. Young's indebtedness. I did not indorse it because I could not find any place. I have not indorsed it yet.

325 It is not true that the reason I have not endorsed it on Mr. Young's indebtedness is because the Waters-Clark Lumber Co. sold the logs for less than they paid for them and because as a matter of fact they hav-n't any proceeds to turn over to me. The Waters-Clark Lumber Co. have paid that note.

Q. It is stamped paid about the time this lawsuit was commenced March 26th?

A. I don't remember the date.

Q. Have you the note with you?

A. No sir.

Mr. WICKHAM: The note to marked "Paid, March 26th 1903."

Q. You simply stamped the note paid but you have not applied it on any of Mr. Young's indebtedness yet?

A. I have applied it on some of Mr. Young's indebtedness but I have not indorsed it on any particular note. I do not mean by saying that I have applied it that I have a book account with Mr. Young besides the note.

Q. Where have you applied it?

A. Simply by——

Q. Mental reservation of it?

A. No sir.

Q. Kindly tell us how you have applied that payment?

—. If you mean by "applied," indorsed, I hav-n't done it. I have credited it on our books as received on Mr. Young's indebtedness.

I do not mean to say that I have charged cash and credited bills receivable with that amount of money. There would only be an entry on one side because one side of it was cash and that wouldn't be entered. On the other side we credited undivided profits.

Q. I understand that you have taken $2500 that you say was paid to him and charged it to cash and credited it to undivided profits. Is that correct?

A. Yes.

Q. Now if you had indorsed that on one of Mr. Young's notes it would have been charged to cash and credited to bills receivable; would it not?

A. If it had been indorsed on one of Mr. Young's notes when the note was held as an asset and counted in bills receivable, it would have been credited to bills receivable.

All of these Young notes are charged off to profit and loss. I don't remember when that was done. It was not the 1st of January 1902 nor the 1st of January 1903. It was before that. I don't remember the date. It is not the fact that the Waters-Clark Lumber Co. took these logs and lumber and agreed with the bank that they would sell the logs and sell the lumber and would pay the labor liens against them and turn over to the Eau Claire National Bank to be applied on Young's indebtedness to the bank, all of the balance. That was not the agreement. What induced me to release our chattel
326 mortgages on these lower logs and lumber was because the Waters-Clark Lumber Co. agreed to pay us what we had in them. We had in them something over $8,000 is my recollection when we took the mortgage. No it was not so much then. It was on March 29th when they bought the logs. So far as we were concerned that was the only undertaking of the Waters-Clark Lumber Co., to pay us what time checks we held.

Q. Wasn't the agreement that they would account and apply all of the proceeds, all of the amounts mentioned in the bills of sale, turn it all over to the bank except what they had to pay for labor liens?

A. No I don't think it was just that way.

Q. Isn't that just exactly what they did?

A. What is that last question again?

Q. Wasn't the agreement that they would account and apply all of the proceeds, all of the amounts mentioned in the bills of sale, turn it all over to the bank except what they had to pay for labor liens?

A. No I don't think that is just right. That is not just what they did. That note that the Waters Clark Lumber Co. gave to John Young in the back room and that he carried to me in the front room for $2514 represented the difference between what the Waters-Clark Lumber Co. paid for the logs and the amount of indebtedness against the logs. That did not include both the upper and the down river logs.

Q. Don't you know that both the upper and down river logs were conveyed at the same time, two bills of sale made on the same date, both the Cadott logs and the up river logs were transferred at the

same time were they not, one for $10,000 and something
327 and one for $11,000 and something?

A. Yes I think so.

Q. And this $2514 note was the difference betwe-n $21,000 the sum of the two, and the outstanding debts against the logs?

A. Oh yes in that sense it included both. They turned over to Young and Young to me the $2500 note. I think that after Feb. 20th and between then and March 29th we paid certain number of time checks that were issued for supplies. I also said that at that time I took these mortgages I took two notes aggregating $27,000 and a mortgage to secure those two notes as collateral security. I said that the $27,000 included what he then owed us and some advances we would make in the future. These supply bills that the bank paid between Feb. 20th and March 29th I think were the bills and accounts which we had taken security on Feb. 20th. They were secured by this chattel mortgage as an advancement I think. With one or two exceptions every one of those time checks which were given for supplies and which were sold to our bank was indorsed by Mr. Reagan, sold to us by Mr. Reagan. I should think we took one after Feb. 20th, probably from the Dells Milling Co.

Q. And relied on them except for the security you had taken of the former mortgage?

A. If we did take one from the Dells Milling Co. we took it with their indorsement also. After Feb. 20th I don't think we advanced any money to Mr. Young personally and I don't think we paid any claim except those that were secured by this mortgage or by time checks indorsed by Mr. Reagan or someone else. I think I said that we paid the Cheney claim. I think as a matter of fact that is
one of the claims that we held until June 7th that was paid
328 as I testified by the Waters Clark Lumber Co. There wer-n't any of these marked paid or in fact paid at the Eau Claire National Bank until the Waters Clark Lumber Co. gave their check for the amount which the bank held.

Q. Now the first of these two statements which you have made and put in evidence is back in 1901. They appear to be made in your handwriting, the one of May and the one of July, 1901, where were they made?

A. Any that were made in my hand writing were made in the Eau Claire National Bank. The items were put down as they were given to me by Mr. Young. Mr. Young was then at the bank. Probably Mr. Young did not have with him any scale sheets at the time he gave this statement of his logs or lumber. In making up this statement when he gave me the information he referred to a pocket book. I don't think he had anything that purported to be an estimate of the amount of timber that he held, a written estimate that he showed to me at the time. I asked him to give me a statement and he did it and I took it down there and then. That is true as to those statements that are in my hand writing but I don't remember which they are. I took up each one of these items that he was listing to me and talked to him about it and asked such questions as would be material to determine its value. If

he had an account against a man I asked him where the man lived and how much it was worth and whether it was good or bad. I don't know that I asked him about the kind of lumber, whether it was encumbered and all that sort of thing in just that way. I made inquiries of him as to each of these items as to everything I could think of as bearing on its value. I don't think I asked him as to the age of the horses. I didn't make any inquiries as
329 to the carts and outfit to determine what kind of an outfit he had except what he told me about it.

"Q. Didn't make any inquiry to determine whether his lumber had been graded, or how much of a certain grade there was; how much it was worth per thousand of the different grades?

A. Yes sir, I frequently talked with him about the——

Q. You did the same with what he listed to you as stumpage as you did with all the rest, did you not?

A. I talked to him about the value and quantity of it yes, the quantity and value." I talked with him about the quantity and value of his lumber and stumpage. I based my statement that I thought March 29th, 1902, that Mr. Young had the lumber or the proceeds of it to the value of $5,000, on his statement that he had made not long before that and what he had sold since. On February 1st he made me a statement. This was March 29th.

Q. Now tell us how you figured that he had $5,000 in lumber or the proceeds?

A. On Feb. 1st he had $9,600 worth of lumber as I recollect it now and he had sold practically $3,600. We had sold it to the Waters-Clark Lumber Co. We ought to have had $6,000 worth. I got it a little too low. I really believed he had $6,000 instead of $5,000. I did not know that the statement of the amount of lumber listed Feb. 1st was only approximate. I don't know that when I told Mr. Wickham to draw mortgages I told him to put it in at about 1,000,000 feet. I don't remember whether he so put it in the mortgage or not. Very likely I listed it at about 1,000,000 feet. I don't remember. Mr. Young always told me there was more than 1,000,000 feet, more than the amount that he stated to me. I believed him. I don't know why I didn't put it in at more. I did not know that the lath and shingles on March 29th had been sold and disposed of long before that. I don't remember that we ever released the mortgage on the lath and shingles.

Q. Well the city clerk has a record of it, the lumber that was sold to the Waters-Clark Lumber Co. was the lumber that was in your mortgage that you had taken two or three weeks before?

A. It was in our mortgage, part of it.

330 Q. You released that so he could sell it to the Waters Clark Lumber Co. did you?

A. Well I don't know that we released the mortgage. We took it off the record so that he could sell that lumber to the Waters-Clark Lumber Co. I don't know why we didn't take the mortgage off the logs so he could sell them to the Waters-Clark Lumber Co. I don't know whether it is on record yet or not.

Q. If that had been a sale with which the Eau Claire National

Bank had nothing to do, do you suppose that the Waters-Clark Lumber Co. would buy $21,000 worth of logs with a $15,000 mortgage on it and let it stay there?

A. I don't know sir.

Q. You believed on March 29th that he had saw mills valued at $5,000 and you had already collected insurance on a total loss on his Paint Creek mill hadn't you by that time?

A. We had collected $1,000 of insurance.

Q. And that was for a total loss, all the insurance there was on it.

A. That was all the insurance. They paid the loss in full.

Q. And yet on March 29th you were carrying the mill at the same valuation that Mr. Young had listed it before the fire?

A. Carrying the mill? I didn't say so. As I remember now I believed that Mr. Young's logging outfit was worth $2,000 in cash to pay debts with. That is based on a well defined belief in my mind at that time. I don't remember of the items of the logging outfft that he had at that time. He told me what it was worth.

Q. All you know about it is what he told you is it?

A. I was with him when I was up there the fall before.

Q. Your evidence as to what you believed is based solely and entirely isn't it and you have read it directly from the state-
231 ments made to you on February 1st?

A. As to the value of it?

Q. Yes?

A. Yes sir.

Q. And as to the property that he had?

A. Yes sir. When I say that I believed that he had that property it is because I believe the statement that he then made to me.

Q. You had no other evidence of its value one way or the other had you?

A. Perhaps some evidence but I am no judge of the value.

Witness Excused.

C. W. Lockwood, recalled for defendant, testified as follows;

Examined by Mr. Wickham:

At the time I went to Cadott in Feb. 1902 and looked over Mr. Young's books I inquired as to each item that he said he owed and each item as to what he said was owing to him. The amount of claims that he said was owing to him for lumber etc. at that time was between $4,000 and $4,500. I asked him about each item as to whether it was good and collectible went over it with him. I can remember only two accounts that he said were doubtful. One was M. L. Boyles of Keokuk and the other was a small account of about $25.00 against a man named Hurlburt.

Q. Mr young testified that his accounts at that time had not all been posted; state what if anything was done by you to ascertain the true condition of the accounts at that time?

A. Well Mr. Young took his ledger and went over it and looked at the various accounts. When he couldn't get the amounts from

his ledger he would refer to his journal or to his memorandum book, something of that kind, so I suppose he gave me very
332 close to the correct amount of each account. I endeavored to get at the exact amount of each account as close as I could. I investigated as closely as I could each account and inquired about it until I was satisfied I had got at the exact condition of it. I heard Mr. Young's evidence in which he went through the items of the account or the items that are contained in the financial statement of February 1st as to certain claims that he had against persons that were offset and things of that kind.

Q. Did he give you any information of that kind at that time?

A. I don't remember that he did especially regarding the accounts receivable; let me see he did about some of the small accounts that were owing him by a few farmers around there. Those men he said had hauled logs for him and he thought in that way some of the small accounts would be settled up. I shouldn't think those small accounts that he mentioned would aggregate over $200. I endeavored to ascertain at that time just what debts Mr. Young was owing. I have already testified as to the names and amounts of the debts that he gave me that he said he was owing.

Q. State whether or not you believed the information that he gave you at that time about the condition of his affairs?

A. I believed that his statement was substantially correct. At the time I obtained that information from Mr. Young at Cadott, he told me about some payments he had made on some up river logs. He didn't tell me anything about the mark on the up river logs. He only gave me information as to the amount of the up river logs that he was buying or expected to buy in a general way. He told me he had contracted for as he supposed in the neighborhood of
333 2,000,000 feet of logs upon Yellow river at so much a thousand for the different kinds and he told me when the payments would become due.

Q. I think you testified before that on two different occasions you spoke to Mr. Young about selling the logs; state the first time you spoke to him about selling the logs with reference to the time that they were sold, how long before they were sold was it when you first mentioned it to him.

A. It must have been two or three weeks before they were sold. I don't know but longer. When I first heard about McKinnon recording his mark was after the logs were sold to the Waters-Clark Lumber Co. I had learned about the McKinnon contract before that when I was at Cadott. Mr. Young I think told me that McKinnon was the man that was selling the most of the logs, William McKinnon.

(Paper shown witness.)

Q. I show you paper marked defendant's exhibit 9; is that the McKinnon contract you referred to?

A. Yes sir.

Defendant offers exhibit 9 in evidence which was received by the court.

The following is a copy of exhibit 9:

This agreement made and concluded this 16th day of December 1901, by and between Wm. McKinnon of Chippewa County, Wisconsin, party of the first part and J. H. Young of Eau Claire Wisconsin, party of the second part.

Witnesseth that the said party of the first part for and in consideration of the premises and agreement hereinafter contained on the part of the said party of the second part to be observed and performed hath and doth hereby promise and agree to and with
334 the said party of the second part that he will during the winter of 1901 and 1902 sell and deliver to the said party of the second part and put into Yellow River flowing through Chippewa County, State of Wisconsin saw logs of pine, hemlock, basswood, elm, ash and tamarack not less than eight inches at the top end in even lengths of from ten feet upwards each said even lengths to overrun three inches for waste unscaled. That all said logs shall be square butted and properly marked thus, Yo, and end marked this — — and scaled only after so marked which scaling is to be done by Henry Haskins only. To break all rollways and to put said logs afloat in said Yellow River in time for the spring drive of 1902.

In consideration whereof the said J. H. Young the said part- of the second part hath and doeth hereby promise and agree to and with the said party of the first part that he will pay the said party of the first part for hemlock $4.25 No. 1 per M ft. Elm No. 1 $4.75. Basswood No. 1 $7.00, Tamarack No. 1 $4.25; Ash No. 1 $7.00 Shingle pine from $3.54 to $6.00. all timber mentioned above to be long butted if necessary and Henry Haskins to be judge of same. It is also agreed that H. Haskins shall grade the timber as to quality and tha- his decision be final between both parties.

The payments to be made in the following manner—One dollar per thousand feet to be paid the first of each month as the logs are delivered in said Yellow River based upon the latest report certified to by the scaler.

On the 15th of April 1902 the amount for labor to be paid and the balance remaining due on said logs to be paid on June 1st 1902. It is also understood and agreed on between party of the first
335 part and party of the second part that party of the first part holds a lien on said logs until payments are made in full.

In witness whereof the said parties hereunto set their hands the day and year first above written.

WM. McKINNON. [SEAL.]
J. H. YOUNG. [SEAL.]

In presence of
J. W. W. POSTE, M. D.
NICK RUBIE.

Mill pine saw logs prices to be made according to quality Recorded in Lbr. Inspector's office Dec. 26, 1901 at 11:30 A. M. in book "A" of sales, page 211."

(WITNESS continues:)

I saw this contract before the sale to the Waters-Clark Lumber Co. when I was figuring up. Refreshing my recollection from that

I knew before the sale to the Waters-Clark Lumber Co. all about that contract and of its being recorded by Mr. McKinnon. The mark of all the logs was "Y O." I am positive that the recording of this paper in the lumber inspector's office was something different from recording the mark. That is what I referred to when I learned the mark was recorded. It was after the sale to the Waters-Clark Lumber Co. I don't remember when I learned that but I think probably it was after the sale to the Waters-Clark Lumber Co. But it was before the sale to the Waters-Clark Lumber Co. that I knew of the contract because I looked up the whole matter. I knew the contract was recorded. Mr. Young talked to me about selling the lumber to the Waters-Clark Lumber Co. before he in fact signed the bill of sale.

336 Q. Mr. Young testified that the first he heard about the matter you presented to him a bill of sale and asked him to sign it; state whether or not you did present to him a bill of sale and ask him to sign it the first time you ever talked to him or he talked to you about the sale of the logs?

A. We talked about the matter a great deal so far as I can remember it. We talked about it before the bill of sale, before I ever saw any bill of sale of the logs. Mr. Young said something to me about selling the logs to some one else before he sold them to the Waters-Clark Lumber Co. I remember one day he came in and wanted to know how many labor orders the bank held because he said he had a customer in view and of course that customer would want to know how many of those the bank held because he would have to pay them. He did not mention the name of any customer he was figuring on selling the logs to.

Cross-examination.

Examined by Mr. BUNDY:

I do not pretend to remember the exact amount of those accounts receivable which Mr. Young said were against men who were working for him or hauling logs for him and that might be settled up afterwards. There were a great many small accounts under $100. Those small accounts were largely against people around Cadott who had not bought large quantities of lumber. I think they were mostly for lumber. I don't remember seeing anything about the Wannegan account.

Q. And a great many of the people against whom he held accounts were people for whom the bank were continually paying time checks issued by Mr. Young were they not, a good many of

337 the names were familiar to the people in the bank on account of time checks?

A. I don't know that they were. They might have been.

Q. So you were informed that at least part of the accounts held against people around Cadott that they were or had been working for Mr. Young?

A. Not from examining the orders I wouldn't remember. I was informed at Cadott that some of them at least were against people who were working for him or who had been working for him. I

went up to Cadott for the purpose as I understood it of looking up Mr. Young and particularly as to his indebtedness. I don't think that while I was at Cadott I made any inquiries at the bank at Cadott as to what if anything Mr. Young owed at that bank. I did not inquire at the bank at Cadott nor of Mr. Monroe neither did I inquire of Mr. Reagan. I don't think I made any inquiry up there of anyone except Mr. Young. Mr. Young told me in a general way what he had contracted to pay for those 2,000,000 feet of logs. I couldn't remember exactly the price now per thousand that he was to pay. It seems to me the shingle logs were four or five dollars. I couldn't remember the amount. He did not show me the contract he then had with McKinnon at that time. They were all cheap logs. I should think from $6.00 down, different prices for different kinds.

Mr. WICKHAM: I think the contract says some were $7.00.

Q. The contract provides that it shall be paid as follows hemlock $4.25 per thousand, elm $4.75; basswood $7.00; tamarack $4.25; ash $7.00; shingle pine from $3.54 to $6.00; is that about as you remember the prices?

A. Just about yes sir. The logs that he had purchased from other people were a little lower in price as I remember it. This
338 trip was about Feb. 7th. Mr. Young told me that he had paid $900 on these up river logs. I understood at that time that he owed the balance of the logs. I know William Irvine of the Chippewa Lumber & Boom Co.

Q. I wish you would refresh your recollection again or think of it a moment; did you on or about the 5th of April, 1902 go to Chippewa Falls and there have a conversation with Mr. Irvine and arrange with him to drive the Young logs out of the Yellow River down to the pond here in the city of Eau Claire?

A. I don't think I did on that day no sir. I remember of being there on other business and inquiring about the driving of the logs on the Yellow River. I don't remember of Mr. Irvine saying they wouldn't drive them unless they knew where they were going to get paid or anying of that kind. In that conversation I never said that the bank would see him paid or anything of that kind. I did not say in substance to him "We will see you paid." I told him the logs had been sold to the Waters-Clark Lumber Co. and I told him who the Waters-Clark Lumber Co. were.

Q. You testified when you were called first Mr. Lockwood that you had a conversation with Mr. Young to which he testified in the evening there at the bank relative to giving a bill of sale and that Mr. Young at that time refused to sign it?

A. He did. I don't think that was the first conversation I had with him. I think I talked to him about it before that. At that time he refused to sign or objected to signing. Those are the two times that I remember on which I asked him to transfer them to the Waters-Clark Lumber Co.

339 Q. Now was it your purpose Mr. Lockwood in urging or asking Mr. Young to transfer these logs to the Waters-Clark Lumber Co. to protect the rights of the bank under the mortgage that they had taken on the down river logs?

A. My idea was to see the logs owned by some one responsible party so that the bank's claim would be protected, the claim that it had against the logs. It was because I was fearful of their having been marked the same and being mixed that the bank's security on the down river logs would be jeopardized if they were mixed. That is certainly the reason why I urged Mr. Young to transfer them to the Waters-Clark Lumber Co. or some other person. I presume I talked with Mr. Clark some time before the conversation I had with Mr. Young relative to the Waters-Clark Lumber Co. taking them. I did not make any arrangement with Mr. Clark in substance that the Waters-Clark Lumber Co. were to take the logs and we were to release our chattel mortgage on condition that they would pay us all the proceeds over and above what was necessary to pay on the lien claims against the logs. The arrangement was that if they were sold to anybody that the claim that the bank had against the logs should be paid. Of course it would have to be paid. That is the down river logs.

Q. Was that contract made by the Waters-Clark Lumber Co., that agreement or arrangement at the time they took them; did you have that understanding with them?

A. Yes they would have to do that. The logs were transferred to the Waters-Clark Lumber Co. and the bank released its mortgage and permitted that to be done pursuant to that arrangement. The price inserted in my handwriting in the bill of sale represents
340 the amount which the Waters-Clark Lumber Co. was to pay in gross. The note which the Waters-Clark Lumber Co. gave to John H. Young of $2514 was the difference between the gross purchase price and the labor claims against it as I then understood. Those embraced the down river and the up river logs.

Q. And under that agreement that note was to be delivered or paid by the purchaser to the Eau Claire National Bank; that note represented the surplus?

A. The note was to be paid to the Eau Claire National Bank if the Eau Claire National Bank could get it from Mr. Young. Undoubtedly it was the agreement both with Mr. Young and with all parties that he was to turn it over. As a matter of fact it was turned over pursuant to that. At the time I had these two conversations with Mr. Young relative to transferring the logs to the Waters-Clark Lumber Co. I was advising him as an officer of the bank to put those logs where they could be handled properly. Undoubtedly prior to having this conversation I discussed with the other officers of the bank the advisability of having them transferred to some one person. I suppose I talked it over with any of the other officers or directors of the bank that I happened to see. I remember hearing Mr. Ingram say that those logs would all have to be purchased by one party. Undoubtedly I talked it over with Mr. Coffin. I supposed that Mr. Coffin knew that this chattel mortgage would hold on those logs until it was assumed by a responsible party. Undoubtedly he knew of this talk that I had had between Mr. Young and the Waters-Clark Lumber Co. and myself by which it was finally consum-ated.

I suppose he knew it prior to the time it was done and consented to it.

Redirect examination.

Examined by Mr. WICKHAM:

341 Speaking of the agreement as to what the Waters-Clark Lumber Co. was to pay, the Waters-Clark Lumber Co. agreed to pay the bank nothing except the amount of the claim that the bank then held against Young and this note if Young turned it over to the bank. That was the sum total of what the Waters-Clark Lumber Co. was to pay the bank. The Waters-Clark Lumber Co. did not agree to pay anything more on the mortgage than what these payments would amount to. When I was at Cadott Mr. Young told me something about the amount and value of the stumpage that he had. He told me that he had 2,000,000 of stumpage that was worth $3.00 a thousand amounting to $6,000.

Recross-examinnation.

Examined by Mr. BUNDY:

I did not go into the question of the stumpage somewhat in detail and ask him where it was located. I asked him if it was paid for. I did not make any inquiry of him at that time as to what title he had to the land.

Q. Did he tell you he had a stumpage contract on land or any details of it?

A. He said he owned the stumpage and had paid for it.

Witness excused.

Deposition of Thomas B. Keith.

THOMAS B. KEITH, called for the defendant duly sworn testified as follows:

Examined by Mr. WICKHAM:

I live at 303 Earl Street, Eau Claire, Wisconsin. I have lived in Eau Claire 33 years and am 33 years old. I have been assistant cashier of the Eau Claire National Bank for several years last
342 past. I have recently been confined to my home on account of sickness. I have been so confined since March 13th. I am still confined to my home on account of sickness. I was assistant cashier of the Eau Claire National Bank in the month of April 1901. I remember the occasion of John H. Young paying to the Eau Claire National Bank on or about April 26th 1901 $2,000 in currency. He gave the money to Mr. Coffin. Mr. Coffin turned it over to me and I counted it and he indorsed it on his note. I think he did at least. I couldn't swear to it. Indorsed it on a note that Young was owing to the bank. I had some conversation with Mr. Young at that time. I asked John where he made the raise, where

he got the money, and he said he had sold shingles to the Northwestern Lumber Co. and that this was pay for them.

Q. Was that statement made in Mr. Coffin's presence?

A. Mr. Coffin was sitting at his desk. He could have heard it.

Cross-examination.

Examined by Mr. BUNDY:

I have stated all the conversation. I know John Moon, the secretary and treasurer of the Northwestern Lumber Co. I don't remember in that conversation of Mr. Young's saying anything to Mr. Coffin indicating that he referred to any former conversation that he had had. I couldn't say that I heard all that was said to Mr. Coffin. I heard part of the conversation; I was working within a few feet of them and heard most of the conversation and I might have heard all of it but I couldn't say. Mr. Young was sitting with Mr. Coffin at the time I counted the money.

Q. Your attention was on your work and not particularly
343 on the conversation?

A. Not particularly interested in the conversation except I was kind of interested too, to hear what John was saying. I am always interested in things that are going on. My mind and attention was taken part of the time at least in counting the money. I wouldn't want to testify positively that I heard all that Mr. Young said or all that Mr. Coffin said.

Witness excused.

C. F. COFFIN called for the defendant being duly sworn testified as follows:

Examined by Mr. WICKHAM:

I reside at 455 Congress street, Eau Claire. I have lived in Eau Claire 35 years. My business is machinist and I am employed by the Phœnix Manufacturing Co. I never saw a certain saw mill owned by John H. Young on Paint Creek that was said to be burned in the month of Feb. 1902.

Q. Did you ever prepare or make out any estimate of the loss on account of a fire in that mill in Feb. 1902?

A. I made out a list of machinery furnished by Mr. Young, yes sir.

Q. Did you make out the list?

A. I copied it. That is he gave me the articles and I put them down and gave the price. I got the price from a price list. I gave him the prices of some articles that he had from the price list.

Q. Did you have anything to do with the making of the specifications or figuring the articles on the list in any respect whatever except simply giving the prices of the articles which he had mentioned?

A. That is all. I knew nothing about the loss myself. I
344 did not know whether the articles on which I gave prices were the articles included in any loss or not. I did not figure over the matter with any fire insurance adjustor.

Cross-examination.

Examined by Mr. BUNDY:

All I know about it was a certain list of shafting and other kinds of machinery, boxes and pulleys etc. was brought to me on a paper. I was asked to put a value from my knowledge of what such things sold for, on the various items on that list and I did that to the best of my ability and gave the list after I had completed it to Mr. Young. I don't know anything about who made the list, whether Mr. Young or the insurance adjustor, other than that Mr. Young brought it to me and I put the prices on it.

Recross-examination.

Examined by Mr. WICKHAM:

I think I made the list as Mr. Young read them off to me and put the prices down at the same time. I put the prices down for new articles.

Witness excused.

E. M. FISH, called for defendant being duly sworn testified as follows:

Examined by Mr. WICKHAM:

I live in Eau Claire and am a member of the corporation of the E. M. Fish Co. My company bought a car load of lumber from John H. Young in March 1902. The lumber was shipped from Cadott.

Q. In whose name was it shipped, who was the shipper, in what name did it come to you, from whom did it purport to come?

A. The lumber was bought from Mr. Young. I can tell in
345 whose name it was shipped by referring to the freight bill. I have the freight bill with me. (Witness refers to paper.) "A. A." it says. That is all there is on it. It was shipped March 26th 1902. The lumber consisted of No. 4 boards, some lath and some cull dimensions. I could give the figures of each item. It was 6,000 feet of No. 4 boards, 7500 lath, 6719 feet of 2 inch cull lumber. It was 2 inch dimension. It was all of it new lumber. There were no nail holes in it. None of it was old lumber which had the ends of it sawed off, freshly sawed off. I paid $10 a thousand for No. 4 boards, $4.00 a thousand for the lath and $10 for the No. 2 dimension. It figured up $127.19. It was reasonably worth that amount less the freight. The freight was $21.00.

Cross-examination.

Examined by Mr. BUNDY:

$127.19 was the price agreed upon between me and Mr. Young for the lumber. It was worth that. I do not remember that that is the car of lumber about which I had correspondence with you at one time or with Mr. Young. I remember about some lumber that I directed Mr. Young to come and take away, that I wouldn't have it,

it wasn't worth anything but that was not this car load of lumber. It was before this lumber. It is not this lumber referred to here. I did not examine the ends of this lumber carefully to know whether it had been sawed off freshly or otherwise with that point in view. It had not been sawed off freshly. I could tell without looking. I did not feel of it. No one advised me as to whether or not it had been sawed off. I could tell by the looks of the lumber. I scaled those boards. I looked at every board. I did not look at the
346 ends of it particularly. I did not make any objection to paying for this lumber and did not kick about it any. I never made any kick about this at all. Those were No. 1 lath. The board- were short. My recollection is they were 12 feet long. I don't know as they all were. They were short boards. That lumber was taken out of pile, it had the appearance of being piled. I don't remember about having strip marks on it. This lumber had been "stuck up." I am positive that none of this lumber at any time had been used for any purpose or any part of it.

Witness excused.

D. S. CLARK, recalled for defendant testified as follows:

Examined by Mr. WICKHAM:

Q. I first became a director of the Eau Claire National Bank I think about the 18th of January, 1902, somewhere along there. I first became a stock holder of the bank a short time before that perhaps a week or ten days. Prior to the time when I purchased the lumber from Mr. Young I had some conversation with him about selling the lumber for him to other parties. I gave Mr. Young the names of several commission men who were selling lumber for us. Mr. Young said he wanted to move his lumber that he had at Cadott. I was trying to help him sell it. I did something in the way of assisting him in selling his lumber or attempting to assist him in selling his lumber just before I purchased it for the Waters Clark Lumber Co. I gave him the names of men who were selling lumber for us. I told him to write them what he had and they could perhaps move it for him. I don't know whether or not he did write or not. It was perhaps a couple of weeks before the time when
347 I first talked of purchasing it. I don't know just the time. I should say it was ten days or two weeks before I did purchase it when I first had the conversation with him about purchasing it. Mr. Young told me that he had some lumber there that was pretty hard to sell to any one person—I don't mean to any one person—but to sell it by the car and he wanted to find a buyer that would take all that he had there and take it where it was. He had had some trouble with grades in shipping it. He told me about one party in Chicago who came there and bought the lumber and inspected it there and after they had gotten the lumber to Chicago he made a further reduction for grade, after they had inspected it at Cadott. That was before I had seen or examined the lumber. I don't know that Mr. Young said just how many feet of lumber he had at that time. He told me about the grades that he had in a

general way, what the character of the stock was. The next thing that was done concerning the matter of purchasing the lumber was that Mr. Young asked me if I would take the lumber. I told him I would send a man up there and have it looked over and if we could agree on the price we would take it. He said what he wanted for the lumber. I think he asked me $7.00 a thousand for it as it was there. I think that was the first proposition. The next thing that was done was I sent Mr. Sires up and had the lumber tallied and had a report on it from him and went up myself and looked the lumber over and the grades as near as I could tell. They were piled, different grades together and Mr. Young and I agreed upon the price at $6.00 a thousand. Lumber when it is graded and piled, each grade should be in a separate pile. That is the general custom, that is No. 5 should be piled in one pile and No. 4 in another and No. 3
348 in another and so on. Sometimes when they are short of piling room they have to put four and five together and 3 and 4. I heard Mr. Young's evidence about some lumber that was piled nearer the depot than the balance of the lumber with the name of C. H. Mears on it. I didn't see any such lumber here. I compared the lumber that I saw with the scale that was made by Mr. Sires. That included all the lumber I could find there. I heard Mr. Young's testimony about my going up to his office and getting a portion of his stationery and taking it away with me. I think he is mistaken about that. I know he is mistaken about it. I never did any such thing. I told Mr. Young that I would send Mr. Sires up there or someone to scale it. After it was scaled I went up and examined it myself. At that time I did not see Mr. Young. I did not go into his office at that time and get that bill. Before the logs were purchased Mr. Young came to me and wanted to sell me the logs. That was some time before I purchased them. I don't know just how long. He said something to me about selling them to someone else at the time of our negotiations. He said he had another party that would take the logs he thought. He told me of someone he was figuring with to sell the logs to. He said it was John Moon. He did not definitely mention anyone else. He said he had a party he thought would take them but the party wasn't here and he couldn't tell. He said the bank had refused to advance him any more money on the logs he was putting in or buying, especially the upper logs as a reason why he wanted to sell them.

Q. When you were on the witness stand before you testified that before the time when you did purchase you had some talk with Mr. Young about sawing the logs in case you did purchase, state
349 what that conversation was?

A. Mr. Young wanted me to buy the logs and give him the sawing of them. I asked him what he wanted for sawing and he said he wanted the market price, the going price. I am familiar with what was the reasonable price for sawing logs at that time. I was having logs sawed at three different places that year. The reasonable price was from $1.85 to $2.25. The price in case the person sawing did not take the wood and refuse of the mill would be about $2.25. It would be worth to saw the shingles and lath I presume 40

to 60 cents, I don't know. I mean 40 to 60 cents per thousand. I think it was some where about the 22nd of March when I agreed with Mr. Young upon the price that I would pay for the logs. It was on the 24th that I expected to close it up and had the note drawn for the balance. I remember that it was some time before that time that we agreed upon the price that I would pay for the logs. I remember who it was that asked you to prepare those bills of sale. I asked you to prepare them. With reference to the time when I had agreed to purchase it was about that same time. The bills of sale were not prepared until after I supposed the agreement was all made and agreed upon. I heard Mr. Young say in his testimony that he telephoned me at Duluth. I don't remember what he said the conversation was. I remember that Mr. Young did telephone me at Duluth. I think it was sometime between the 24th and the 29th of March I came down within a day or two after that, I don't remember just when and the matter was closed up on the 29th. When I went to Cadott with Mr. Lockwood and looked over the logs I did not make any examination of the lumber. I testified when I was on
the stand before that at the time the purchase was closed up
350 for the logs there was no conversation at all about the sawing
of the logs by Mr. Young. That conversation was had prior to that time. When Mr. Young telephoned me at Duluth he wanted to know when I was coming down to Eau Claire. The conversation I had with Mr. Young over the telephone was that Mr. Young wanted to know when I was going to be in Eau Claire I told him I would be down as soon as I could get through and he said he wanted to see me about selling the logs to me. I told him I would see him as soon as I came down. He did not tell me that Mr. Coffin wanted me to come down to get the matter straightened up. I did not say to Mr. Young at any time when I talked to him about purchasing the logs or at any other time that the creditors could bust the chattel mortgages that the bank held on the logs. I never told him anything to that effect or of that kind. There was no agreement or understanding of any kind between the Waters-Clark Lumber Co. that the Waters-Clark Lumber Co. should buy either the logs or the lumber for the bank and hold it as trustee for the bank and account to the bank for the proceeds of what the Waters-Clark Lumber Co. could get out of it. After the Waters-Clark Lumber Co. purchased the lumber from Mr. Young the bank had no further interest whatever in the lumber or the proceeds. I never agreed or promised to pay anything as the proceeds of that lumber except the note which was given for the lumber which Mr. Young indorsed to the bank.

Q. Did you ever agree or promise to pay anything as the purchase price of the logs to the bank except the orders which the bank held on March 29th, the time of the sale and the notes you had given in case Young should turn it over to the bank?

A. That was all. The bank had no further interes- in the
351 logs after that time. I had some conversation with Mr. Young
about sawing the logs after the time when the Waters-Clark Lumber Co. purchased them on several occasions. He told me what price he wanted for sawing the logs. He always said he wanted the market price. I think it was about the 20th of May that he men-

tioned the figures. That was before I sold the logs to the Dells & Shingle Co. That was the first time I was able to get him to say what he did want. I had attempted before that time to find out and agree with him on some definite price for sawing.

Q. On this occasion when he told you what he wanted what did he say?

Plaintiff objects as incompetent, irrelevant and immaterial. The court overrules the objection.

A. He named a price that was beyond all reason and said——

Plaintiff moves to strike out the answer. The court ordered the answer stricken out, to which ruling and decision the defendant duly excepted.

(WITNESS continued:) He named $3.50 a thousand as the price for sawing the lumber and wanted the lath and shingles and wood and the offal from the mill. I told him I wouldn't give him anything of that kind, that the price was altogether unreasonable. I never heard of such a price.

Q. Now what was the condition of the logs or a portion of the logs at that time as to whether or not is was necessary that something be done at once?

Plaintiff objects as incompetent, irrelevant and immaterial.

The COURT: Well I cannot think it is material to go into
352 this further to which ruling and decision of the court the defendant duly excepted.

(WITNESS continued:) Mr. Young did not say to me at any time when I talked with him about purchasing the logs that the only way he could get his other debts paid was to have the contract for the sawing of the logs.

Cross-examination.

Examined by Mr. BUNDY:

The Waters-Clark Lumber Co. was organized I think in 1901. From that time to this they have been engaged in substantially the same business. That business consists in buying lumber and logs and kindred business. I testified before that I believed the principal office of the company was at Duluth Minn. This Young purchase is the only transaction that the Waters-Clark Lumber Co. has entered into in this vicinity since its organization.

Q. As a matter of fact Mr. Clark the Waters-Clark Lumber Co. never would have purchased Mr. Young's logs and lumber if it had not been for the connection with the bank and the claim of the Eau Claire National Bank against that property would it?

A. Yes sir we would have purchased it just the same. I mean to say that the fact that the Eau Claire National Bank had a large claim against Young had absolutely nothing to do with the purchase by the Waters-Clark Lumber Co. That is the way I wish to be understood. That was true all of the time during the week or two weeks or three weeks prior to the purchase; the Waters-Clark Lum-

ber Co. were on the market to buy what they could, this including others.

Q. Then why was it that for two weeks before you pur-
353 chased that lumber, you were giving Mr. Young the names of commission men to whom he might sell it, why didn't you buy it yourself?

A. Mr. Young hadn't said that he wanted to sell it in a lump to somebody at reduced prices. He wanted to peddle it out by the car.

Q. You tried to find a purchaser for him during all the time the Waters-Clark Lumber Co. was in the market for that kind of stuff?

A. I gave him the names of some people. I did not offer to buy it. I did not make any proposition to buy it.

Q. And before you bought that lumber from Mr. Young you had a conversation with the officers of the bank relevant to their claim upon it didn't you; didn't you have an express understanding with the officers of the bank relative to their claim upon it?

A. No, sir, after I bought it I had an agreement.

Q. No before you bought it?

A. No sir.

Q. Before that invoice of that 575,000 feet of lumber was turned over to you by Mr. Young you had talked it all over with Mr. Young as to how the bank's interests should be protected hadn't you?

A. I knew that the bank had a mortgage on it and I was going to see that the money went to the one that had the mortgage. That was all. I had that talk with Mr. Coffin before that transfer was made.

Q. When you came to transfer the lumber you had a similar talk with Mr. Lockwood, Mr. Coffin and Mr. Ingram?

A. No sir I don't think I did. I don't think I had any talk with them at all.

Q. Do you mean to testify you went on and bought those logs of John Young without having any undertaking or arrangement or talk with the bank at all by which the bank was to be protected?

A. You said the lumber.

354 Q. I am talking about the logs?

A. Yes, I thought you asked me another question.

Q. Do you mean to testify to this jury that the Waters-Clark Lumber Co. bought all of those John Young logs without your having any arrangement, understanding or agreement with the officers of the bank as to their interest in those logs?

A. I certainly had an understanding with them yes.

Q. You had that understanding before you bought the logs at all did you not?

A. Well I must have had before I concluded the trade yes. The understanding was that they were to have their time checks paid and that any money that was in excess of the time checks was to be given to the mortgagee. There was no other understanding. By the mortgagee I mean the bank. That was the sole arrangement that I had with the bank at the time I bought those logs. That arrangement was made with Mr. Young and he consented to it. My evidence is that from March 29th when I bought those logs until May 20th

when I sold them to the Dells Lumber & Shingle Co. the Waters-Clark Lumber Co. was the sole owner of the logs. The bank had no interest in them between those dates. The Waters-Clark Lumber Co. and the Waters Clark Lumber Co. alone were the owner and responsible for them. The Waters-Clark Lumber Co. did not pay the taxes on those logs because they were in litigation. That is the only reason I can give. The city treasurer come to me and asked me to pay the taxes on them. I sent him to my attorney. I don't know that Mr. Wickham is the bank's attorney. I know he is the attorney in this case. When the treasurer asked me to pay the taxes I told him I would see Mr. Wickham myself. I might have told him to go to Mr. Wickham. Mr. Wickham is city attorney. He is
355 also the bank's attorney.

Q And he is your attorney; now if you owned those logs on May 20th what did you want to see the city attorney about them for?

A. He didn't make a demand of me for the taxes until a short time ago. I knew the taxes were due. I knew that the taxes had been assessed to the Waters-Clark Lumber Co. It is my evidence that I didn't know whether I was liable for the taxes or not. I knew the taxes had been returned as delinquent and haven't been paid yet. Since I became the owner of that lumber up at Cadott there has not been a good many of John Young's bill heads around the bank. There has been none at all. The people at the bank have not used them for billing out lumber since that purchase. I never have seen any around the bank at all. I did not testify that the invoice was made there at the bank in my presence. I testified I thought it was made out in the bank. I don't know that it was. I don't know that it was written out right in my presence by Mr. Young. I was there when that transaction took place. It was at the bank. I don't know when it was. It was not the evening, the night when Mr. Coffin telephoned me over to John Scott's. I couldn't say that it was in the evening. I won't swear it was not. I don't think Mr. Coffin was present. Mr. Young and I were there. I don't think Mr. Coffin was in the room. I think he was in the bank at the time but I don't think he was in the room where Mr. Young and I were. I testified on my first examination that the first time this invoice was talked over at all was at the time it was made out.

Q. Well then if there had been no talk about this invoice before, and it was made out there at that time, I should think you could remember of the fact of its having been written and the
356 amount put in; can't you recall anything about it?

A. No sir. I know that the amount of lumber put in that invoice was the amount that my scaler had scaled it. Mr. Young had a copy of that scale at Cadott. I don't remember of telling Mr. Young of the amount of that scale. I don't think I did. I compared the amount that is in the invoice with the scale. I can remember of doing that. I remember of doing it then and there. I had a copy of the scale. I made out a demand note then as I understand it for $3400. I don't know what Mr. Young did with the note. I know that he indorsed it but I don't know that he

indorsed it there at that time. It was the agreement that he was to give that note to the bank. That was the agreement at the time I purchased. I didn't know when he did it. I know that it went to the bank. The note marked plaintiff's exhibit E was paid by the Waters-Clark Lumber Co. March 26th, 1903. It was due June 24th 1902 or about that time. I presume the Waters-Clark Lumber Co. have been solvent ever since this note was given and able to pay their indebtedness.

Q. As a matter of fact Mr. Clark you didn't get enough money out of the logs and lumber that you bought of Mr. Young to pay the time checks and pay this note to the bank too, did you?

A. I didn't have anything to do with having the note paid. The amount of money we got out of the lumber and logs didn't have anything to do with that. I didn't as a matter of fact get enough out of the logs and the lumber to pay the labor claims and those notes. As a matter of fact we did pay it. I haven't the check with me. It was paid by check. It is charged in my account. I know that. There is no understanding and agreement
357 between myself and Mr. Coffin and the rest of the bank that I am not to pay anything to the bank in excess of what I realize out of the lumber and logs. There is no such understanding either written or verbal or any other way. I testified that after I had talked with Mr. Young about selling these logs that I employed Mr. Wickham to draw the bills of sale. I left the bills of sale with Mr. Lockwood. I don't think I left the bills of sale with Mr. Lockwood for the purpose of having him procure Mr. Young to execute them. I left them with Mr. Lockwood to figure out the amount of the note I was to give to Mr. Young. He wrote in and fixed the consideration in the bills of sale. There was no talk between myself and Mr. Coffin and Mr. Ingram and the other officers of the bank relative to the effect of mixing up river logs and down river logs, on the bank's security. I never heard anything about that.

The Waters Clark Lumber Co. buying those logs and taking title wasn't as I understand it for the purpose at all of preventing the logs getting mixed. The fact that the upper logs had been marked by McKinnon the same as the down river logs had absolutely nothing to do with the Waters-Clark Lumber Co. taking title to those logs. The bank's officials never had any talk with me about that. I never talked with the bank's officers about it. I never knew that the bank's officers apprehended any danger of that kind to their security. I knew after those logs had been transferred to the Waters-Clark Lumber Co. that Mr. Young was working away fixing the mill up down here. I didn't know that Mr. Young put a second mortgage on his house for the purpose of fixing up that mill. I didn't know anything of the kind. He did not tell me so. I knew that right up to the time or a short time before I
358 sold them that Young was working at that mill. I was down there several times. I think the purchaser that Mr. Young spoke to me about who was not here at the time, was after I had bought the logs. It was Mr. Byron Buffington. I don't think

it was the case that he was asking me to hold the logs and not sell them to the Dells Lumber & Shingle Co. until Mr. Buffington would get here as he thought that Mr. Buffington would buy them. It was not Mr. Buffington that Mr. Young was depending on to take those logs off my hands. I think he spoke about Mr. Buffington in the time between the 24th and the 29th, that he thought he could get more money for the logs.

Q. Why Mr. Clark, think of that a little; wasn't it after you had bought the logs, a few days before you sold them to the Dells Lumber & Shingle Co. that Mr. Young was asking you to hold the logs until Mr. Buffington could get here?

A. At that time I expected to have Mr. Young saw the logs.

Q. At what time?

A. I expected to have him saw them until he named the price that he would ask for sawing them. He expected to get Mr. Buffington interested in it. He was going to have Mr. Buffington and Mr. Lockwood and myself form a sort of a company and he expected to get Mr. Buffington in. That was after the Waters-Clark Lumber Co. owned the logs. The talk was to get Mr. Lockwood, Mr. Buffington and myself to take the logs from the Waters-Clark Lumber Co. The reason we three gentlemen were going to take those logs was to let Mr. Young saw them at his mill.

Q. And the necessity for you three gentlemen buying the logs was because O. H. Ingram positively refused to hold them any longer and directed that they be turned into money?

359 A. He didn't have anything to do with them. I did not tell Mr. Young a short time, a day or two before that conference, that the bank must have that money and that Mr. Ingram wouldn't wait any longer.

—. Isn't it true that at the conference you had at the Chippewa Valley Bank that Mr. Buffington made an offer for those logs and asked you to wait until he could look them over, a few days to look them over?

A. He wanted I think ten days or two weeks to look them over. I told him the logs would not be there to look over. I told him I couldn't wait. I told him he couldn't have a minute, that I wouldn't wait the time he wanted. I didn't proceed to sell them to the Dells Lumber & Shingle Co. That wasn't what broke up the trade at all. Mr. Buffington agreed to go in with Mr. Lockwood and I and he left it with me to settle the price of sawing with Mr. Young and he told me that any arrangement that I made with Mr. Young he w-uld go in with.

Q. I am talking about the conversation you had with Mr. Young in which you stated to him that Mr. Ingram insisted upon having his money?

A. No sir I didn't tell him that nor anything like it. It is not customary in the way I transacted business for the Waters Clark Lumber Co. to buy large lots of logs and lumber which are subject to large chattel mortgages without looking up the mortgages.

Q. Why was it if the Eau Claire National Bank had no interest in these logs and you had no understanding with them that you

bought them subject to the $15900 and never had that mortgage taken off the records?

A. They agreed that the mortgage should be taken off the record. I left it to them to take it off and supposed it had been taken
360 off long ago. It was before the transfer that they agreed to take it off, before I took the bill of sale of the logs. It was part of the agreement that they would release the mortgage that they held in consideration of our turning over to them the excess that I had, over the time checks, on all the logs.

Redirect examination.

Examined by Mr. WICKHAM:

The excess I spoke of over and above the time checks was the amount of this note $2514. I had no conversation whatever or agreement or talk to the effect that I would pay any other excess.

Witness excused.

It is admitted that the summons and complaint in this action were served on July 7th 1902 by Arthur M. Bundy.

It is admitted that the summons in the case of Ralph W. Jackman the trustee of the estate of John Young, bankrupt *vs.* the Waters-Clark Lumber Co. in the circuit court of Eau Claire County was served upon S. Clark President of the Waters-Clark Lumber Co., July 3rd 1902.

Defendant offers in evidence the summons and complaint in the case of Ralph W. Jackman, trustee, *vs.* the Waters Clark Lumber Co. Said papers received and marked for identification respectively exhibits 10 and 11.

The following is a copy of exhibit No. 10:

STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,

361 *vs.*

WATERS, CLARK LUMBER COMPANY, Defendant.

The State of Wisconsin to the said Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint.

FRAWLEY, BUNDY & WILCOX,
Plaintiff's Attorneys.

P. O. Address: Eau Claire, Eau Claire County, Wisconsin."

The following is a copy of exhibit No. 11:

STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Plaintiff,
vs.
WATERS, CLARK LUMBER COMPANY, Defendant.

Now comes the above named plaintiff, by Frawley, Bundy & Wilcox his attorneys, and for a cause of action herein shows to the court and alleges that heretofore and on the 7th day of June, 1902 John H. Young of Eau Claire, Wisconsin duly filed his petition in the United States District Court for the Western District
362 of Wisconsin, praying that he be adjudged a bankrupt pursuant to the Act of Congress, and that pursuant to said petition said John H. Young was by said court on that day duly adjudged to be a bankrupt that thereafter, and on the 23rd day of June, 1902 this plaintiff was duly elected and appointed by the creditors of said John H. Young as trustee in said bankruptcy proceedings, which election was approved by Hon. H. M. Lewis, referee in bankruptcy, before whom said proceedings were pending; that thereupon plaintiff duly qualified as such trustee by giving the bond required by said United States District Court and by taking the oath required by law, and thereupon entered upon his duties as such trustee, and brings this action in such capacity. That the defendant Waters-Clark Lumber Company, is a corporation duly organized and existing under and by virtue of the laws of the state of Minnesota.

Plaintiff further alleges that among the assets which came into his possession as such trustee is a claim and demand due to the said John H. Young from the defendant, Waters Clark Lumber Company, which claim and demand is based upon the following facts: That heretofore and on the 10th day of March, 1902 said Bankrupt was the owner and in possession of about three million, five hundred thousand feet of saw logs, then situate in the Yellow and Chippewa Rivers in the State of Wisconsin, and was also the owner and in possession of about one million feet of lumber, six hundred thousand shingles and two hundred thousand lath, then situate at the village of Cadott, Chippewa County, Wisconsin. That on said day said John H. Young was indebted to various and sundry persons, and among others to the Eau Claire National Bank of Eau Claire,
363 Wisconsin, in the sum of twenty-seven thousand dollars, which sum was evidenced by promissory notes executed by said Young and secured by two chattel mortgages dated February 10th, 1902 covering said logs, lumber, shingles and lath, one of which mortgages was to secure the sum of $11,100 and the second of which mortgages was to secure the sum of $15,900; that at the same time the said John H. Young was indebted to various persons for services by them rendered in cutting, hauling banking and

driving said logs and manufacturing and piling said lumber, all of which claims so due to said persons for services as aforesaid constitute liens upon said lumber and saw logs, pursuant to the statutes of the State of Wisconsin.

Plaintiff further alleges that on said 10th day of March 1902 said John H. Young, the Eau Claire National Bank and the defendant herein made and entered into an agreement for the purpose of giving the said Eau Claire National Bank a preference over the other creditors of said John H. Young and for the purpose of hindering, delaying and defrauding said other creditors. That pursuant to said agreement so entered into said John H. Young did on the 10th day of March, 1902 convey all of said logs, lumber, shingles and lath, constituting substantially all of his property then available for the payment of his indebtedness, to the defendant herein, in consideration of an undertaking on the part of the said defendant to sell the same and out of the proceeds thereof to pay all liens then existing against said property, whether created by contract or by statute, including the two chattel mortgages so given to said Eau Claire National Bank, and to account to said John H. Young for the
364 reasonable value of said property in excess of the sums required to satisfy said liens. That immediately after said transfer the defendant herein took possession of said property and thereafter sold and disposed of same, and out of the proceeds thereof paid to the Eau Claire National Bank the sum of $11,100 and paid to various and sundry persons who rendered services in cutting, hauling and banking said logs and manufacturing said lumber the amount of their claims, which constituted liens upon said property, and still retains the remaining portion of the proceeds of such property.

That the defendant in procuring said property to be transferred to it and selling and disposing of the same and paying the proceeds to said Eau Claire National Bank was acting solely for said bank and under its direction, for the purpose of enabling said bank to receive an unlawful preference over the other creditors of said John H. Young, and for the purpose of hindering, delaying and defrauding such other creditors.

Plaintiff further alleges upon information and belief that the reasonable value of the property so conveyed by said Young to this defendant was thirty-five thousand dollars which said sum the defendant promised and agreed to pay therefor, but that no part thereof has been paid except said sum of $11,100 so illegally paid by defendant to said Eau Claire National Bank and certain lien claims, the amount of which plaintiff is unable to state. *Taht* a large num-er of the creditors of said John H. Young have filed claims in the bankruptcy proceedings now pending in the United States District Court for the Western District of Wisconsin aggregating about the sum of eleven thousand dollars, all of which are wholly un-
365 secured by contract or lien, and that no property has come into the possession of this plaintiff as such trustee with which to pay said indebtedness; that in order to pay the same or any part thereof it is necessary that this plaintiff recover from the defendant

herein the reasonable value of the property so conveyed to it by said John H. Young.

Wherefore, plaintiff prays judgment against said defendant for the sum of thirty-five thousand dollars, with interest thereon from the 10th day of March, 1902, with his costs and disbursements herein.

FRAWLEY, BUNDY & WILCOX,
Plaintiff's Attorneys.

JOHN H. YOUNG, recalled by defendant, testified as follows:

Examined by Mr. WICKHAM:

Mr. Liddell and Mr. Graves scaled the lower logs. I couldn't tell you what the amount of the scale is. I hav-n't any of the records. I don't remember that the amount of the scale of both Mr. Lidell and Mr. Graves was 1,670,000 feet. I couldn't tell you whether it was about that or not because I don't know for sure. I sawed into lumber a few of the logs that were scaled by Mr. Graves, I think so. I don't know just how many. Those logs were not scaled because they were a poor lot of logs.

Q. I asked you about those that were scaled?

A. I don't know whether he scaled any of those or not.

Q. Did you saw a large portion of the logs that were scaled by Mr. Graves?

A. No sir those logs were not scaled at all. I don't think
366 I sawed any logs scaled by Mr. Graves. I wasn't there at the mill all of the time. I couldn't tell you. I hav-n't a bit of information as to how many logs I sawed at the mill that were scaled by Mr. Graves, if any.

Witness Excused.
Defendant Rests.

JOHN H. YOUNG, recalled in behalf of plaintiff, testified as follows:

Examined by Mr. BUNDY:

I heard the evidence of Mr. Clark to the effect that I was trying to sell the logs that I owned up there at Cadott in the spring of 1902 to other people. I did not tell Mr. Clark that I had offered those logs to any other person. I heard the evidence of Mr. Clark to the effect that I asked him if he would take my lumber up there at Cadott. I did not have a conversation with Mr. Clark in which I asked him or the Waters-Clark Lumber Co. to take my lumber or buy it. I did not say to Mr. Clark, or any other person that I was negotiating with, that I could sell my logs to John Moon. I heard the evidence of Mr. Keith this morning as to what was said. I did not say to Mr. Keith at the time I paid Mr. Coffin the $2,000 in currency that I had gotten the money from the Northwestern Lumber Co. for shingles that I had sold them.

Q. State fully Mr. Young what you did and what Mr. McKinnon did with reference to the log mark that was used on those logs, relative to having it recorded.

Defendant objects as incompetent, irrelevant and immaterial. The court overruled the objection, to which ruling and decision the defendant duly excepted.

A. When the time came in the fall then I went to Scotty McKay, I think he is the lumber inspector, and I told him I wanted the mark——

367 Q. Did you go there and apply for the mark?

A. I didn't go to his house. I saw him at Cadott. He was there and I paid him for the——

Defendant objects and moves to strike out the statement. Defendant objects to the evidence as incompetent, irrelevant and immaterial. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I paid him for it and he sent me the mark in a letter. The bark mark was "Y. O." and the end mark four Y's altogether. That was the mark used on the McKinnon logs and my logs.

Q. What if anything did you do after getting that mark from the lumber inspector.

Defendant objects as incompetent, irrelevant and immaterial, not proper rebuttal. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I had them stamped on the logs. I procured a stamp to be made at the Phœnix. I examined the records in the lumber inspector's office as to the different marks that are recorded there. The mark that I have described is not recorded in those books for me.

Q. For whom was it recorded if you know?

Defendant objects as incompetent, irrelevant and immaterial. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. William McKinnon.

Q. Did you have any knowledge of the fact that McKinnon had recorded that at the time that you used it on your logs?

Defendant objects as incompetent, irrelevant and immaterial. The court overruled the objection to which ruling and decision the defendant duly excepted.

368

A. No sir I did not.

Witness Excused.

C. T. BUNDY, recalled for plaintiff testified as follows:

Examined by Mr. WILCOX:

I am the attorney that had charge of the investigation of the facts and the institution of proceedings in behalf of the plaintiff in this case and a certain other case which has been referred to and in which the plaintiff here was the plaintiff against the Waters Clark Lumber Co.

Q. And certain documents have been introduced in evidence here being defendant's exhibit 10 and 11, being the summons and com-

plaint in the case to which I have just referred to; I will ask you why you caused a summons to be served on the Waters-Clark Lumber Co. in that case.

Defendant objects as incompetent, irrelevant and immaterial not proper rebuttal. The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I served the summons or caused it to be served without any complaint, believing at the time that the Waters Clark Lumber Co. was a foreign corporation, and knowing that Mr. Clark was an officer of it and seeing him in town one day and knowing he was not here very much and without having definitely decided on a course of action, I directed that a summons be served on Mr. Clark to get jurisdiction of the company while I had an opportunity.

Defendant moves to strike out the answer as incompetent, irrelevant and immaterial, not proper evidence for any purpose.
369 The court overruled the motion to which ruling and decision the defendant duly excepted.

(The WITNESS continued:) Thereafter I caused the complaint to be served on the 28th of July on his attorneys Wickham & Farr who appeared. They appeared after the service of the summons and a complaint was served upon them.

Q. Did you intend by serving that complaint or bringing that action to ratify the sale to the Waters Clark Lumber Co.?

Defendant objects as incompetent, irrelevant and immaterial, not proper evidence for any purpose.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. No.

Defendant moves to strike out the answer as being improper evidence and as incompetent for any purpose. The court denied the motion to which ruling and decision the defendant duly excepted.

Q. Now at the time the complaint was served in that action had you already served a complaint in the case at bar?

Defendant objects for the reason that the record is the best evidence.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. I had.

Plaintiff offers in evidence exhibit E-1 which was received by the court. The following is a copy of exhibit E-1.

Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Plaintiff,
370 *vs.*
WATERS CLARK LUMBER COMPANY, Defendant.

The above named Defendant by Wickham & Farr its attorneys, demurs to the plaintiff's complaint on the following grounds:

First: Said defendant demurs to said complaint, on the ground that it appears on the face thereof, that the court has no jurisdiction of the subject of the action.

Second: Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that the plaintiff has not legal capacity to sue, in this, that said complaint fails to allege that any authority or permission was given to the plaintiff to bring this suit.

Third: Said defendant demurs to said complaint on the ground that it appears on the face thereof, that there is a defect of parties plaintiff and defendant, in this, that the plaintiff failed to join John H. Young as a party plaintiff, and failed to join the various persons mentioned in the plaintiff's complaint, who received preferences, as parties defendant.

Fourth: Said defendant demurs to said complaint on the ground that it appears upon the face thereof, that said complaint does not state facts sufficient to constitute a cause of action.

WICKHAM & FARR,
Defendant's Attorneys.

It is admitted that exhibit F-1 is a true copy of the order sustaining the demurrer in the case of Jackson *vs.* the Waters Clark Lumber Co.

371 Plaintiff offers in evidence exhibit F-1 which was received by the court. The following is a copy of exhibit F-1.

Circuit Court, Eau Claire County.

At a regular term of said court, begun and holden at the court house, in the city of Eau Claire, in said county, on the 17th day of March, 1902, and on the 29th day of August, 1902 a day of said term, Present and Presiding, the Hon. James O'Neill, Circuit Judge.

RALPH W. JACKMAN, Plaintiff,
vs.
WATERS CLARK LUMBER COMPANY, Defendant.

The above named defendant having demurred to the complaint of the plaintiff, and said demurrer having come on to be heard before said court, and after hearing Wickham & Farr, attorneys for the defendant in support of said demurrer, and Frawley, Bundy & Wilcox, attorneys for the plaintiff in opposition thereto, and the court being advised in the premises,

It is Hereby Ordered, that said demurrer be, and the same is

hereby sustained, and that plaintiff may within twenty days after the service of a copy of this order serve an amended complaint on payment of ten dollars ($10.00) costs.

By the Court.

JAMES O'NEILL, *Judge.*

To the above order and to each and every part thereof the plaintiff duly excepted.

By the court.

—— ——, *Judge.*

372 (WITNESS continued:) The copy that has been introduced in evidence of the order sustaining the demurrer was served on me. Since the service of that order, nothing so far as I am concerned has been done in that action. No amended complaint was ever served or drawn. There is nothing alse I can state about either of these actions.

Cross-examination.

Examined by Mr. WICKHAM:

Q. Has there been any agreement extending the time for serving your amended complaint in the case of Jackman *vs.* the Waters Clark Lumber Co.?

A. My recollection is I told you at one time that I wanted to serve an amended complaint and I wanted you to consider that open and you said you would. No stipulation was made, no written stipulation. There was a verbal arrangement that if I wanted to serve an amended complaint I had the privilege of doing so. I have not either served my amended complaint or notified you that I do not intend to do so. I notify you now but heretofore I don't think I have. I do not intend to serve an amended complaint.

Witness Excused.

Testimony closed.

Defendant moves the court at this time that the court direct a verdict in favor of the defendant of no cause of action.

The court denied the motion to which ruling and decision the defendant duly excepted.

C. T. BUNDY, recalled for plaintiff testified as follows:

Examined by Mr. WILCOX:

Defendant objects to the case being opened up again after
373 the motion for the direction of a verdict has been argued.

The court overruled the objection to which ruling and decision the defendant duly excepted.

Q. You may state anything further with reference to the purpose of bringing the action against the Waters-Clark Lumber Co. by the service of the summons on July 3rd.

Defendant objects as incompetent, irrelevant and immaterial and

asked in such a way that it gives me no opportunity to object to improper evidence.

The court overruled the objection to which ruling and decision the defendant duly excepted.

A. As I said before when I served the summons it was because I wanted to get service on Mr. Clark thinking he was an officer of a foreign corporation. Of course at the time I didn't know the facts or hadn't concluded what the trustee's rights in the premises were. It was my idea to serve a summons and afterwards to examine under section 4096 some of the officers of one of the two corporations and determine from that what action to take to preserve the trustee's rights. I had no particular action in mind when I served the summons I didn't know but what it would be necessary to proceed against the Waters-Clark Lumber Co. if any property had been turned over and I didn't know as it would. I hadn't it in my mind and didn't know what the facts were at that time. I served a summons as a precautionary measure and calculated to examine some of the officers under section 4096 until a long time afterwards. Mr. Wickham appeared and demanded a copy of the complaint and I made one subsequent to having served one in the case against the Eau Claire National Bank. I think that is about all.

374 Defendant moves to strike out the answer as improper evidence and incompetent for any purpose.

The court overruled the motion to which ruling and decision the defendant duly excepted.

Cross-examination.

Examined by Mr. WICKHAM:

I was present at the time of the examination of John H. Young in the United States Court in the bankruptcy proceedings. I think that was on the 23rd day of June, 1902, the day the trustee was appointed. I did not participate in that examination. I asked a portion of the questions. I was not present during the whole of the examination. Mr. Hall conducted that examination. I wasn't in the room during the whole of the examination. I was in the clerk's room part of the time.

Q. You knew what the examination was about?

A. I did when I got the transcript of it; yes I knew what it was about.

Witness excused.

Defendant renews motion in view of the evidence given since the former motion was made, to direct a verdict in favor of the defendant.

The court overruled the motion to which ruling and decision the defendant duly excepted.

The following stipulation was entered into by the parties;

It is stipulated between counsel for the respective parties that the amount of lienable claims due laborers on the Cadott logs and

lumber that was paid out of the proceeds of the sale thereof was $8212.35.

That the amount of the lienable claims due laborers on the upper logs that were paid out of the proceeds of the sale thereof
375 was $6052.46.

That the amount paid William McKinnon for balance due on purchase price of logs as per contract recorded in lumber inspectors office was $2627.95.

That the amount paid to the other persons as purchase price of other up river logs was $1039.81.

That the amount of lienable claims held by the bank on February 20th, 1902 was $4737.42.

That the amount of lienable claims held by the bank on March 29th, 1902 was $6758.15.

That the amount of non-lienable claims held by the bank February 20th 1902 not including notes, was $700.

That the amount of non-lienable claims held by the bank March 29th, 1902 not including notes was $1106. The items referred to as non-lienable claims held by the bank is not intended as a stipulation that they were not lienable by virtue of chattel mortgages.

That the total amount received by the bank on claims that it held on February 20th 1902 not including what was paid on lienable labor orders was $6660.99.

It is further stipulated that all material questions of value of the property in question under the issues raised by the pleadings shall be passed upon and decided by the court without being submitted to the jury and the court's findings will be considered with the special verdict.

It is expressly agreed that none of the foregoing stipulations shall be construed or held to be a — by the defendant or the right
376 of the plaintiff to recover on any issue not raised by the pleadings.

After the preparation of the special verdict the following objections and rulings were made and had as to certain questions in the special verdict.

Mr. WICKHAM: I object to the submission of question No. 4 of the special verdict which as the court has now prepared it reads as follows; "Did the Waters Clark Lumber Co. acting for the bank and pursuant to an arrangement between said lumber company and the bank, take the legal title to the lumber in question for the benefit of the defendant under an agreement with the defendant to account to it for a portion of the proceeds."

I don't know what the question means whether it means a portion of the proceeds of the sale to the Waters-Clark Lumber Company or a portion of the proceeds of the re-sale by the Waters-Clark Lumber Company and I object to the submission of that question in that form.

The court overruled the objection to which ruling and decision the defendant duly excepted.

Mr. WICKHAM: I would like to inquire of the court, so we may discuss the matter more intelligently to the jury, whether the ques-

tion means to account to the bank for a portion of the proceeds of the sale that was made to the Waters-Clark Lumber Co. or whether to account to it for some portion of the proceeds of the re-sale in the future by the Waters-Clark Lumber Co.

The COURT: The idea of the court is that the question may mean either that the Waters-Clark Lumber Co. were to account for
377 a portion of the proceeds on a re-sale or to account at once for a portion of the proceeds.

Mr. WICKHAM: I further object to the submision of the question on the ground that it may mean one thing or it may mean another and if the court still rules that the question is a proper question; I ask the court to answer the question "No."

The court denied the request to which ruling and decision the defendant duly excepted.

Mr. WICKHAM: I make the same objection to question 5 that I made to question 4 and I object to the court submitting question 5 in that form.

The court overruled the objection to which ruling and decision the defendant duly excepted.

Mr. WICKHAM: I ask the court to answer question 5 "No."

The court denied the request to which ruling and decision the defendant duly excepted.

Mr. WICKHAM: I ask that question 4 be amended and changed by striking out the words "acting for the bank."

The court denied the request to which ruling and decision the defendant duly excepted.

Mr. WICKHAM: I make the same motion as to question No. 5.

The court denied the motion to which ruling and decision the defendant duly excepted.

Mr. BUNDY: As to questions 4 and 5 I would request the court to change them in this way; "Under an agreement with the defendant and Young to account to the defendant for a portion of the proceeds." I think the question as to whether Mr. Young was a party to that transaction is of importance and ought to be included in that question.

Mr. WICKHAM: I would like to inquire of the court if it
378 is the intention of the court to submit by questions 4 and 5 the issue raised by the pleadings as to whether or not the actual equitable ownership of the logs and lumber was sold by Young to the Waters-Clark Lumber Co.

The COURT: No I think the intention of the court ought to appear in the form of the qustions which are submitted and the instructions.

Mr. WICKHAM: I have been unable to ascertain what the intention of the court is from the form of the question in that respect, and if there is any dispute in the evidence as to the actual ownership of the property at the time of the sale, such question should be submitted and if there isn't any the court should so instruct the jury that there is no dispute in the evidence on the subject.

The COURT: I think the amendment asked by Mr. Bundy should be made.

Mr. WICKHAM: The court has not ruled on my inquiry which the reporter has taken down.

The COURT: Well the court thinks that its intention ought to appear by the form of the question and appear by its instructions to the jury which the court has not yet prepared.

Mr. WICKHAM: I then wish to take a further exception to the forms of the questions and to submitting questions in that form without being able to ascertain what the meaning intended is.

The following is a copy of the charge of the court to the jury.

379 The defendant thereupon duly submitted to the court written requests requesting the court to charge the jury as follows:

"Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The defendant requests the court to charge the jury as follows in relation to the question in the special verdict No. 9 to 12 inclusive.

1. If on March 3, 1902, when the Bank received from Young the note of the Waters Clark Lumber Company, which was given as the purchase price of the lumber, the Bank or its agents acting therein, did not have reasonable cause to believe that it was intended thereby to give it a preference in violation of the bankrupt law and to enable it to obtain a greater percentage of its debt, than other unsecured creditors would be able to obtain, then you should answer this question "No."

2. The evidence shows that Young made several financial statements to the Bank, showing that he owned property of a value largely in excess of all his debts, and that Mr. Lockwood and Mr. Coffin made certain inquiries of Mr. Young as to what debts he owed. The officers of the Bank were justified in relying upon the statements made to it by Mr. Young, especially a written detailed statement, except so far as they had knowledge or information that it was not correct, if they had any such knowledge or information.

3. Written statements made by Young to the Bank for the purpose of stating his financial condition is entitled to great weight in determining what information the Bank had on this subject.

4. If the Bank believed that such statements contained a correct account of the debts which Mr. Young was owing and knew of no information to the contrary, it was not bound to search the records for mortgages recorded and the recording of any mortgages would not of itself be notice to the Bank of the existence of any such debt.

380 5. You are particularly instructed that the words "reasonable cause to believe that it was intended to enable the

Bank to obtain a greater percentage of its debts than other creditors would be able to obtain" does not mean a reasonable cause to suspect such intention. It is not enough that a creditor had some cause to suspect that his debtor did not have sufficient property left to pay an equal percentage to other creditors of the same class, but he must have such knowledge of fact as to induce a reasonable belief thereof in order to invalidate a payment. To make mere suspicion of ground of nullity in such a case, would render the business transactions of the community altogether too insecure. It was never the intention of the framers of the law to establish any such rule. A man may have grounds to suspect that his debtor is in failing circumstances and yet have no cause for a well grounded belief of the fact. He may be unwilling to trust him further. He may feel anxious about his claim and have a strong desire to secure it, and yet may have no reasonable ground to believe that it was intended to pay him a greater percentage of his debt than other creditors would be able to obtain. Obtaining additional security, or receiving payment of a debt under such circumstances is not prohibited by the law. Hundreds of men constantly continue to make payments up to the very eve of their failure, which it would be very unjust and disastrous to set aside, and yet this could be done in a very large proportion of cases if mere grounds of suspicion were sufficient for that purpose. The debtor is often bo-yed up by the hope of being able to get through with his difficulties long after his case is in fact desperate and his creditors, if they know anything of his embarrassment, may participate in the same feeling, or at least be unwilling to think there is a possibility of his succeeding. To overhaul and set aside all his transactions with his creditors made under such circumstances, because there may exist some ground of suspicion of his inability to carry himself through, would make the bankrupt law an engine of oppression and injustice. It would in fact have the effect of producing bankruptcy in many cases where it might otherwise be avoided.

6. In answering this question you have a right to consider the fact that the Bank at about this time paid orders of Young which were not a lien upon the logs, thereby extending him further credit. You should also consider the question of the amount of the Bank's claim as compared with the claims of other creditors that the Bank knew about, and whether or not the Bank had any information that should have caused it to believe that it was collecting a greater percentage of its claims than other creditors would be able to collect. It is important to consider what the Bank then knew about the amount of the other claims against Young and it is immaterial so far as this question is concerned what those other claims in fact amounted to.

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7. The fact that the Bank held claims against Young that were past due, is not sufficient to constitute reasonable grounds of belief that the debtor was insolvent, or that a preference was intended.

8. To hold that a creditor receiving payment of a past due debt would constitute reasonable grounds to believe that a preference

was intended, would be to put at hazard many business transactions and make the bankrupt law oppressive.

9. If the agents of the Bank believed, and were justified in believing that Young had sufficient property left to pay his other creditors as great a percentage of their debts as the Bank received, at the time the payments were made, then such payments were not received unlawfully and you should answer this question "no."

WICKHAM & FARR,
Defendant's Attorneys."

The court refused to give each of said requests except such portions thereof as *was* incorporated in the general charge, and to each such refusal to charge as requested, the defendant, before the jury retired to deliberate on its verdict duly, timely and severally excepted.

The court thereupon charged the jury as follows:

Title.

"Charge.

GENTLEMEN OF THE JURY: In this case there is submitted to you for answer certain questions involving issues of fact
382 arising upon the pleadings and upon which evidence has been offered on the trial. You are not to find a general verdict in which you determine whether the plaintiff shall have a judgment or the defendant shall succeed, but your duty is simply to answer the questions which have been prepared involving the issues. You are not to consider who ought to succeed on the trial of this action. Your duty is to take the questions up in their order, read them carefully so that you understand them, consider all the evidence applicable to each and then make such answers as the truth requires.

The questions have been prepared with great care by the court, after suggestions from counsel, and you are urged to read them carefully until you feel that you understand them before deciding upon the answers.

The first three questions are as follows:

Question 1. Was the property of Young on February 20th, 1902 when the chattel mortgages were executed, at a fair valuation, sufficient in amount to pay his debts.

Question 2. Was the property of Young on March 3rd, 1902, when the lumber was transferred, at a fair valuation, sufficient in amount to pay his debts?

Question 3. Was the property of Young on March 29th, 1902, when the logs were transferred, at a fair valuation, sufficient in amount to pay his debts?

These questions relate to the issue as to Young's solvency on three different dates stated in the respective questions which are February 20th, 1902, March 3rd, 1902 and March 29th, 1902. Instead of using the term "insolvent" the questions employ words found in the definition of that word in the Bankruptcy Act. It

is provided by that act, omitting a clause which has no application to this case, that a person shall be deemed insolvent, within the provisions of this act, whenever the aggregate of his property shall not, at a fair valuation, be sufficient in amount to pay his debts.

So you are to consider what property Young owned, what it was worth at the respective dates at a fair valuation, how much his debts were at the times referred to and determine whether his property was sufficient in amount to pay his debts. If it
383 was insufficient to pay his debts then Young would be insolvent. In ascertaining the value, you are not to consider what Young might have ultimately realized by the use of his skill but what would be a fair valuation if the property were sold as the statute says "at a fair valuation."

Question 4 is as follows: "Did the Waters-Clark Lumber Company, acting for the bank and pursuant to an arrangement between the said lumber company and the bank, take the legal title to the lumber in question for the benefit of the defendant under an agreement with Young and the defendant to account to it for a portion of the proceeds."

That the legal title of the lumber was taken to the Waters-Clark Lumber Co., there is no dispute. You are to inquire whether the lumber company in the transaction was really acting for the bank and for its benefit and whether such action was under an agreement with Young and the Bank that the company should account to the bank for a portion of the proceeds.

If you find that the lumber company bought the lumber on its own account and independently without any agreement with Young and the Bank, that it would act for the bank in the transaction, then you should answer this question "No."

It would not be sufficient to justify an affirmative answer that the lumber company had merely an understanding with the officers of the bank that it would pay certain claims, lienable or non-lienable which the bank held, or pay some portion of the indebtedness secured by chattel mortgage. Something more than this would be necessary to be proven.

It was, of course, competent for the Lumber Company to buy the lumber and the logs and to have an understanding with the bank that it would pay certain claims which the bank held, without it being held that it was acting for the bank and for its benefit. Any third party could buy the property and have an understanding that the bank's claims should be paid, and yet not be acting for the bank or in its interest. Such third party might act independently and yet have an understanding that it would pay off liens on the property purchased.

But the claim of the plaintiff here is that the Waters-Clark Lumber Company was really doing what it did in the interest of
384 the bank or in the words of the question it was "acting for the bank" and "for the benefit of the defendant" and that the title was taken in the Lumber Company "under an agreement with Young and the defendant to account for a portion of the proceeds."

You are not called upon to consider just how the Lumber Company was to account for the proceeds, whether it was to sell the property, pay off liens and claims and turn over the balance, or to pay off claims out of the purchase price agreed upon between Young and the Lumber Company and at once pay over the balance. The question does not involve any such detail. It is only necessary to inquire whether the Lumber Company in some way was to account to the bank for a portion of the proceeds.

What has been said under question four is also applicable to questions arising under question five.

You will consider all the facts and circumstances bearing on this question and return such answers as the truth warrants.

Questions 6, 7 and 8 are these:

Question 6. Was it the intention of Young, by the execution of the chattel mortgages to the bank to give the bank a preference, that is, to enable the defendant to obtain a greater percentage of its debt than any other creditor of Young, of the same class?

Question 7. Was it the intention of Young by the transfer of the lumber to the Waters-Clark Lumber Company to give the bank a preference?

Question 8. Was it the intention of Young by the transfer of the logs to the Waters-Clark Lumber Company to give the bank a preference?

In the first question the court has inserted a clause stating what is meant by giving a preference where the debtor is insolvent, employing the words of the statute.

Sub-division "*a*" of section 60 of the Bankruptcy Act provides that a person shall be deemed to have given a preference if, being insolvent, he has within four month before the filing of the
385 petition, or after the filing of the petition and before the adjudication, made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

So that you may have before you the language defining what is meant by a preference in case of insolvency of a debtor, the words of the law are used in the sixth question.

But in the 7th and 8th questions the word "preference" alone is used as the jury will understand fully its meaning from the wording of the 6th question and the statute which has been quoted.

You will first have determined whether Young was in fact insolvent. If you find that Young was insolvent at the various times stated, then you are to find whether he intended to prefer the bank. To intend to prefer would be to make a transfer for the purpose of enabling the bank to obtain a greater percentage of its debt than any other creditors of the same class.

So far as creditors' rights are involved in this action they are all of the same class, by which is meant they would all receive the same percentage on their claims. Claims for taxes or wages within certain times so as to be preferred would be of a different class. But claims

of general creditors like those proved in the Young bankruptcy proceedings are all of the same class.

You will carefully note the circumstances attending Young's transfers to discover whether he intended to prefer the bank; what he knew and believed as to the amount and value of his property and the amount of his debts and what was his situation as to his remaining creditors after he had parted with the property transferred to the Lumber Co. You will consider his financial statements made to the bank and his own testimony bearing on his intent. You will determine what credibility should be given to the testimony of the bankrupt as bearing on this inquiry as to his intent. Did Young honestly believe that his financial condition was as appeared in the written statement he made on Feb. 1, 1902, and make the transfer without any intention to give a preference, or did he know
386 such statement was not a fair showing of his condition and that by the transfers the bank would obtain an unfair advantage?

The question upon all the evidence is left for your decision.

Question- 9, 10, 11 and 12 involve the issue whether the agents of the bank had reasonable cause to believe that Young intended to give the bank a preference.

In order to answer this question affirmatively it is not necessary to prove that the officers of the bank acting for it, had actual knowledge that a preference was intended by Young. But there must have been reasonable cause to believe that Young intended to give a preference.

If facts and circumstances were brought home to the bank or its agents acting in the transactions such as would put an ordinarily prudent man upon inquiry, then it is chargeable with knowledge of the facts which such inquiry should reasonably be expected to disclose.

If on March 3rd, 1902, when the bank received from Young the note of the Lumber Company, which was given as the purchase price of the lumber, the bank or its agents acting therein, did not have reasonable cause to believe that it was intended thereby to give any preference in violation of the bankrupt law, and to enable it to obtain a greater percentage of its debts than other creditors of the same class would be able to obtain, then you should answer question No. 10 in the negative.

The evidence shows that Young made several financial statements to the bank, showing that he owned property of a value largely in excess of all his debts and that Mr. Lockwood and Mr. Coffin made certain inquiries of Mr. Young as to what debts he owed. Detailed written statements made to a bank of the financial condition of a party seeking credit, made in the usual course of business, are no doubt entitled to considerable weight in determining what information the bank had as to the business standing of such person. What weight should be given to the statements furnished by Young to the defendant is for the determination of the jury. You are to consider whether the bank was justified in relying on those statements and what other information it had of Young's financial condition.

If the bank believed that such statements contained a
387 correct account of the debts which Mr. Young was owing and knew of no information to the contrary, it was not bound to search the records for mortgages recorded and the recording of any mortgages would not, of itself, be notice to the bank of the existence of any such debt.

The jury are instructed that the words "reasonable cause to believe that it was intended to enable the bank to obtain a greater percentage of its debts than other creditors would be able to obtain" does not mean reasonable cause to suspect such intention. It is not enough that the creditor had some cause to suspect that his debtor did not have sufficient property left to pay an equal percentage to other creditors of the same class but he must have such knowledge of facts as to induce a reasonable belief thereof or of circumstances to put him upon inquiry in order to find that the creditor had reasonable ground to believe that a preference was intended.

A man may have grounds to suspect that his debtor is in failing circumstances and yet have no cause for a well grounded belief of that fact. He may be unwilling to trust him further. He may feel anxious about his claim and have a strong desire to secure it, and yet may have no reasonable ground to believe that it was intended to pay him a greater percentage of his debts than other creditors would be able to obtain. Obtaining additional security or receiving payment of a debt under such circumstances is not prohibited by the law.

In answering these last questions the jury have a right to consider the fact that the bank at about the time referred to, paid orders of Young which were not a lien upon the logs, thereby extending him further credit. You should also consider the question of the amount of the bank's claim as compared with the claim of other creditors that the bank knew about, and whether or not the bank had any information that should have caused it to believe that it was collecting a greater percentage of its claim than other creditors would be able to collect. It is important to consider that the bank then knew about the amount of the other claims against Young, and it is immaterial so far as this question is concerned what those other claims in fact amounted to, if the bank did not know of them.

388 The fact that the bank held claims against Young that were past due is not of itself sufficient to constitute reasonable grounds of belief that the debtor was not solvent or that a preference was intended.

If the agents of the bank acting therein believed and were justified in believing, that Young had sufficient property left to pay his other creditors as great a percentage of their debts as the bank received at the time the payments were made, then you will not find that the bank had reasonable cause to believe that a preference was intended.

The transfers which are claimed to amount to preferences, were made in February and March, 1902. The last financial statement of Young to the bank was made on February first. According to this statement Young had a considerable surplus over and above his debts. Young says he told Coffin that certain items were only a guess. I think Mr. Coffin denies this.

Where these two witnesses differ, it will be for the jury to weigh their testimony and ascertain who is telling the truth. You will consider their appearance on the witness stand, the candor with which they appear to testify, the accuracy of their memories, their interest in the event and apply all other tests which occur to you to enable you to determine their credibility.

It is important to know whether Mr. Coffin in good faith believed and relied upon these written statements furnished to the bank as a basis of credit, whether he had no knowledge of Young's debts outside of what appeared in the statements, whether he believed that Young had stumpage, lath, shingles, mills, machinery and bill-receivable worth many thousands of dollars and sufficient to pay all other debts not held by the bank or whether as Young testifies he was informed of other indebtedness not appearing on the statements and whether he had good reason to believe that the bank by the transfer was leaving large amounts of other debts unprovided for.

You have heard the testimony of Mr. Coffin and Mr. Lockwood as to the inquiries made into Young's affairs and what information was obtained. You have listened to what Mr. Young has said about his conversations with the officers of the bank. As the court
389 has before said the weight of the testimony of these witnesses is to be decided by the jury. After passing upon the question of credibility you will put all the facts and circumstances together and say whether the bank had reasonable ground to believe that Young was intending to prefer it or whether its officers believed and were justified in believing that Young had other property sufficient in amount to pay his debts not held by the bank or provided for by the transfers.

Question 11 relates to the Cadott logs and 12 to the upper river logs. The chattel mortgages did not cover the upper logs. However the transfer of both lots was made at the same time. Whether the existence of the chattel mortgages makes any difference is left for the consideration of the jury.

The burden of proof to establish the insolvency of Young at the time stated in the first three questions is upon the plaintiff, that is, the plaintiff must establish by a preponderance of the evidence that the property of Young, at a fair valuation, was not sufficient in amount to pay his debts in order to warrant the jury in returning negative answers to these questions.

The burden is also upon the plaintiff to establish by a preponderance of the evidence the affirmative as to questions 4 and 5, that is, that the Waters-Clark Lumber Co. acted for the bank and took the legal title to the lumber and logs for the benefit of the defendant.

In order to justify you in returning an affirmative answer to all the remaining questions you must find by a preponderance of the evidence that such affirmative has been proved. Unless you are satified by a preponderance of the evidence that the affirmative has been established as to questions 6 to 12 inclusive you will answer such questions No.

Now gentlemen this long trial is closing. The duty of counsel and court is performed and the responsibility of deciding these important

issues is upon the jury. It will require much care and deliberation to consider and apply the evidence so as to answer these questions as the truth requires. The court feels sure that you will intelligently and conscientiously do your duty."

390 The jury thereupon retired to deliberate on its verdict and afterwards returned into court with a verdit which is of record herein.

The defendant thereupon after said verdict was rendered and during the same term of court, duly made and filed exceptions to the charge of the court, which exceptions are as follows:

"Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

Now comes the above named defendant by Wickham & Farr its attorneys, and makes and files the following exceptions to the charge of the court to the jury.

First. Defendant excepts to that portion of said charge reading as follows: "In ascertaining the value, you are not to consider what Young might have ultimately realized by the use of his skill but what would be a fair valuation if the property were sold as the statute says 'at a fair valuation.'"

Second. Defendant excepts to that portion of said charge reading as follows: "You are to inquire whether the lumber company in the transaction was really acting for the bank and for its benefit and whether such action was under an agreement with Young and the Bank that the Company should account to the bank for a portion of the proceeds."

Third. Defendant excepts to that portion of said charge reading as follows: "It would not be sufficient to justify an affirmative answer that the lumber company had merely an understanding with the officers of the bank that it would pay certain claims, lienable or non-lienable which the bank held, or pay some portion of the indebtedness secured by chattel mortgage. Something more than this would be necessary to be proven."

391 Fourth. Defendant specially excepts to that portion of said charge last above quoted reading as follows: "Something more than this would be necessary to be proven," for the reason that said portion of said charge both by itself and in connection to the question to which it relates, is so indefinite and uncertain that it does not specify what that "something more" should be and leaves the jury to guess at what the question means.

Fifth. Defendant excepts to that portion of said charge reading as follows: "But the claim of the plaintiff is that the Waters-Clark Lumber Company was really doing what it did in the interest of the bank, or in the words of the question it was 'acting for the bank' and 'for the benefit of the defendant' and that the title was taken in the

Lumber Company 'under an agreement with Young and the defendent to account for a portion of the proceeds.'

Sixth. Defendant excepts to that portion of said charge reading as follows: "You are not called upon to consider just how the Lumber Company was to account for the proceeds, whether it was to sell the property, pay off liens and claims and turn over the balance, or to pay off claims out of the purchase price agreed upon between Young and the Lumber Company and at once pay over the balance. The question does not involve any such detail."

Seventh. Defendant excepts to that portion of said charge reading as follows: "It is only necessary to inquire whether the Lumber Company is some way was to account to the bank for a portion of the proceeds."

Eighth. Defendant excepts to that portion of said charge reading as follows: "What has been said under question four is also applicable to questions arising under question five."

Ninth. Defendant excepts to that portion of said charge reading as follows: "To intend to prefer would be to make a transfer for the purpose of enabling the bank to obtain a greater percentage of its debts than any other creditors of the same class."

Tenth. Defendant excepts to that portion of said charge reading as follows: "So far as creditors' rights are involved in this action they are all of the same class, by which is meant they would all receive the same percentage on their claims."

Eleventh. Defendant excepts to that portion of said charge
392 reading as follows: "But claims of general creditors like those provided in the Young bankruptcy proceedings are all of the same class."

Twelfth. Defendant excepts to that portion of said charge reading as follows: "If facts and circumstances were brought home to the bank or its agents acting in the transactions such as would put an ordinariiy prudent man upon inquiry, then it is chargeable with knowledge of the facts which such inquiry should reasonably be expected to disclose."

Thirteenth. Defendant excepts to that portion of said charge reading as follows: "It is important to know whether Mr. Coffin in good faith believed and relied upon these written statements furnished to the bank as a basis of credit, whether he had no knowledge of Young's debts outside of what appeared in the statements, whether he believed that Young had stumpage, lath, shingles, mills, machinery and bills receivable worth many thousands of dollars and sufficient to pay all the other debts not held by the bank, or whether as Young testifies, he was informed of other indebtedness not appearing on the statements and whether he had good reason to believe that the bank by the transfer was leaving large amounts of other debts unprovided for."

Fourteenth. Defendant excepts to that portion of said charge reading as follows: "After passing upon the question of credibility you will put all the facts and circumstances together and say whether the bank had reasonable ground to believe that Young was intending to prefer it, or whether its officers believed and were justified in

believing that Young had other property sufficient in amount to pay his debts not held by the bank, or provided for by the transfers."

Fifteenth. Defendant excepts to that portion of said charge reading as follows: "Whether the existence of the chattel mortgages makes any difference is left for the consideration of the jury."

WICKHAM & FARR,
Defendant's Attorneys."

The plaintiff thereupon filed a motion for judgment upon the verdict, which motion is as follows:

Title.

"Now comes the plaintiff by Frawley, Bundy & Wilcox,
393 his attorneys, and on the coming in of the verdict of the jury, duly impannelled to try said action, and at the same term at which said action was tried and moves the court for judgment upon such special verdict and upon the undisputed evidence for the sum of twenty three thousand nine hundred and eighty six dollars and fifty three cents ($23986.53), together with interest thereon from the date of the commencement of this action, to wit, on July 7th, 1902.

Dated July 2nd, 1903.

FRAWLEY, BUNDY & WILCOX,
Attorneys for Plaintiff."

The defendant thereupon moved the court to amend the special verdict and for judgment upon the record, minutes of the court, undisputed evidence in the cause and on the verdict as amended, filing a written motion therefor, which motion is as follows:

Title.

"Now comes the defendant by Wickham & Farr its attorneys, and moves the court on the record and minutes of the court and the undisputed evidence in said cause, to amend the special verdict as follows:

First. By striking out the answer "yes" to question four and substituting in lieu thereof the answer "no."

Second. By striking out the answer "yes" to question number five and by substituting in lieu thereof the answer "no."

Third. By striking out the answer "yes" to question number nine and substituting in lieu thereof the answer "no."

Fourth. By striking out the answer "yes" to question number ten and by substituting in lieu thereof the answer "no."

Fifth. By striking out the answer "yes" to question number eleven and by substituting in lieu thereof the answer "no."

Sixth. By striking out the answer "yes" to question number twelve and by substituting in lieu thereof the answer "no."

And said defendant further moves the court for judgment dismissing plaintiff's complaint, with costs in favor of the defendant

on said special verdict as amended, and on the minutes of the court, the undisputed evidence and the records in said action.

Dated April 17, 1903.

WICKHAM & FARR,
Attorneys for Defendant."

394 The plaintiff afterwards filed another motion for judgment upon the verdict, which motion is as follows:

Title.

"Now comes the plaintiff, by Frawley, Bundy & Wilcox, his attorneys, and on the coming in of the verdict of the jury, duly impannelled to try said action, and at the same term at which said action was tried, and moves the court for judgment upon such special verdict, and the findings of the court as to the value of the property in question, and the stipulation of the parties relative to such findings for the sum of twenty three thousand nine hundred and eighty six dollars and fifty three cents, ($23986.53), together with interest thereon from the date of the commencement of this action, to wit, on July 7th, 1902.

Dated July 18th, 1903.

FRAWLEY, BUNDY & WILCOX,
Attorneys for Plaintiff."

The court took said motions under advisement and thereafter made and filed an opinion and decision thereon, which is as follows:

"Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee, *Trustee*, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

Decision of Motion for Judgment Upon the Special Verdict.

The questions argued by counsel on the motion for judgment on the special verdict have received that careful consideration required by their difficulty and importance to the parties. As the Court remarked at the close of the oral argument, it is well understood that whatever the decision of the trial court may be, the judgment is to be reviewed by the supreme court. So this court could have decided the motion offhand and permitted the parties at once to appeal. But this seemed not to be a full and proper performance of the duty imposed upon trial courts. So an effort has been
395 made to reach conclusions justified by legal principles and adjudicated cases.

I.

The counsel for defendant strenuously argues that this court ought not to entertain the action for the reason that it is brought to

recover a penalty and that courts of one jurisdiction will generally refuse to enforce such a liability created by the laws of another jurisdiction. That this is a general rule is well settled.

The Antelope, 10 Wheat. 66.
Flash *v.* Conn., 107 U. S. 371.

The precise question raised here was decided in 1872 by our Supreme Court in Brigham *v.* Claflin, 31 Wis. 607, in which it was held that in an action brought by the assignee of a bankrupt, to recover the value of goods alleged to have been transferred by the bankrupt in fraud of the provisions of the bankrupt law, less than four months before the filing of the petition for the purpose of giving a preference, that the state court would not take jurisdiction for the reason that the action was brought to enforce a penal statute of the United States. It was assumed that a statute which enjoins a duty to be performed by the officers of a corporation and in case of failure on their part to perform such duty, makes them individually liable for the debts of the corporation, is penal in its nature and can only be enforced in the state enacting the law. And following this reasoning that the provisions of the bankrupt law which forfeit and destroy a title acquired under the circumstances stated in the complaint in that section are highly penal in character and would not be enforced in another jurisdiction.

The rule of Brigham *v.* Claflin was affirmed in Bromley *v.* Goodrich 40 Wis. 131, in 1876.

The case of Mueller *v.* Bruss, 112 Wis. 406, does not in any way overrule the two cases above cited, for in the last case the action was to set aside a conveyance made more than six months prior to the filing the petition in bankruptcy for actual fraud.

So if we were to follow the last word of our own Supreme Court the order should be that the action be dismissed.

396 It is to be noted that in the case of Mueller *v.* Bruss, Judge Bardeen says that they are inclined to adopt the view that a trustee in bankruptcy may sue in the state court. "And therefore hold that the construction given to the Federal statute by the United States Supreme Court should control."

But it is urged that when this action was commenced, the state court alone had jurisdiction and that unless the state court entertains jurisdiction, there would be no remedy whatever. By the Act of March 1903, the U. S. District Court was given concurrent jurisdiction with the state court in such actions as this. Mr. Collier in his work on Bankruptcy says that one reason for the amendment giving the U. S. District Court jurisdiction was that the state courts were "unconsciously hostile and their calendars so crowded as to preclude speedy trials." Collier's Bankruptcy, p. 426.

This action was tried after the passage of the amendment of March last. The plaintiff might have discontinued, paid the costs and begun a new action in the Federal Court. If nothing more could be said this court would be bound by the rule in Brigham *v.* Claflin.

But I am of the opinion that a Federal question is involved,

and that the U. S. Supreme Court has overturned the doctrine of our own court.

If the Wisconsin Supreme Court should hold that the provisions of the Bankrupt Act would not be enforced in our state courts so far as they are penal in nature, an appeal would lie to the U. S. Supreme Court under U. S. Revised Statutes, sec. 709. In such case there would be a "final judgment" "in the highest court of a state" "where is drawn in question" the "validity of a statute of" the United States.

William *v.* Heard, 140 U. S. 529 (35:550).
Huntington *v.* Attrill, 146 U. S. 657 (36:1123).

The doctrine of Brigham *v.* Claflin is expressly disapproved in Huntington *v.* Attrill, *supra.* This action was commenced in the Baltimore City Circuit Court where the bill was sustained. On appeal the judgment of the court below was reversed by the
397 Supreme court of Maryland by a divided court. The action was brought to enforce a liability imposed on the defendant as an officer of a New York corporation for debts of the corporation incurred while the defendant was an officer, on account of the filing of a false certificate. The supreme court of Maryland held that the liability was in the nature of a penalty and could not be enforced by the courts of another state. The original case will be found reported in 2 L. R. A. 779.

Mr. Justice Gray delivered the opinion of the supreme court of the United States. In the opinion it is said: "The question whether a statute of one state which in some respects may be called penal, is a penal law, in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act." "The provisions of the statute of New York, now in question, making the officers of a corporation, who sign and record a false certificate of the amount of its capital stock, liable for all its debts, is in no sense a criminal or quasi criminal law." "As the statute imposes a burdensome liability on the officers for their wrongful act, it may well be considered penal, in the sense that it should be strictly construed. But as it gives a civil remedy, at the private suit of the creditor only, and measured by the amount of his debt, it is as to him clearly remedial. To maintain such a suit is not to administer a punishment imposed upon an individual against the state, but simply to enforce a private right secured under its laws to an individual. We see no just ground, on principle, for holding such a statute to be a penal law, in the sense that it cannot be enforced in a foreign state or country."

In Whitford *v.* Bank of Oxford, 176 U. S. 559 (44:587) it was held that the liability of a stock holder in a corporation to an additional amount equal to his stock, though created by statute, is contractual in its nature, and that an action upon this liability is not one to enforce a penal statute, but only to secure a private
398 remedy. The court say this "is not open to question since the decision in Huntington *v.* Attrill."

The case of Huntington *v.* Attrill has been cited in several other later cases in the U. S. Supreme Court, and settles the law in all jurisdictions where Federal questions are involved.

I conclude that the provisions of the Bankruptcy Act as to preferences, while severe and highly penal in some cases, are not penal in the "international sense," and that it is the duty of state courts to enforce this law of Congress.

II.

1. Plaintiff's counsel ask the court to order judgment for the entire value of the logs and lumber transferred to the Waters-Clark Lbr. Co. worth $25,000 or more. Counsel for defendant contend that the bank never received the logs or lumber; that the legal title went to the Lumber Co. and that the bank cannot be charged with what it never received, and that a recovery for the value of the notes cannot be had in this action because the complaint is not framed with a view to try such an issue.

Can a recovery be had for the full value of the property transferred to the Lumber Co.?

The total amount of debts proved in the Bankruptcy court against Young is about $11000. The exact figures I do not have at hand. If a recovery may be had for the full value of the logs and lumber we might have a singular situation. Suppose Young had been discharged in Bankruptcy. I do not know whether the evidence shows this, as a transcript has not been furnished me. But if he has not been discharged, he will probably obtain such relief. Now the trustee recovers say $25000 from the defendant, and pays off creditors to the amount of $11000. There is a surplus after paying costs of say $12,000. What is to be done with it?

The defendant cannot participate in a dividend. It cannot prove its claim because it has contested. In Brandenberg on Bankruptcy, 3d Ed. Sec. 876, it is said: "Under the Act of 1867, a creditor might surrender a preference and prove his claim, though if the surrender was not voluntarily made he was prohibited from proving his claim.

While there is some diversity of opinion under the present
399 law upon this point, the weight of authority upholds the proposition that a creditor who has received a preference with knowledge of the debtor's insolvency and that he was being preferred, will not be permitted to prove his claim after the preferential payment has been recovered through resort to the courts."

Th only party who can claim this balance is the bankrupt himself. He will take this money and enjoy it free of any claims which the bank may ever make upon him, for he has been discharged from his debts. The bank having acted in perfect good faith in all its dealings loses its entire claim of $27000 and under the forms of law the bankrupt is made comfortable with property which justly belongs to another. I am unable to see why just such a result may not be reached if plaintiff's contention is correct.

Counsel for defendant on the oral argument characterized such a result as "legalized robbery." Whatever may be said of such a rule, I feel that before applying it in this case, the court should be fully

satisfied that such is the law applicable to the facts developed on the trial.

2. The evidence does not prove nor have the jury found that the title to this property ever came to the defendant. It is not found that the Lumber Company was the agent of the defendant. If that were so then it would result that the defendant really received the property. In this respect the situation differs from the case of Fleming *v.* Andrews, 3 Fed. 632 as pointed out in the brief of defendants' counsel.

The jury has found that the Lumber Company took title pursuant to an agreement between Young and the bank by which the Lumber Company was to account to the bank for a portion of the proceeds. But whatever the arrangement was, the title went to the Lumber Co. and not to the bank. The bank received the notes and not the logs and lumber.

I conclude the bank is not liable for what it did not receive.

3. It is claimed by plaintiff's counsel that the bank is not only liable for the value of the logs and lumber but that no credit is to be made for lienable claims. If this court were now to hold that
400 defendant is liable for the value of the property transferred to the Lumber Company, it would not adopt the rule claimed by the learned counsel for the trustee, to be the law of this case.

It has been held that the trustee is entitled to the gross proceeds and that the court can not allow to a preferred creditor such amounts as he has paid other creditors.

Collier on Bankruptcy, p. 427.

But whether under our statute as it now reads a lien exists on logs in favor of laborers before the filing of the claim, I am of the opinion that payment of the lienable claims of those believed by the parties to be lienable, did not amount to a preference.

In Sec. 955, Mr. Brandenberg says: "Workmen, clerks, and servants constitute a distinct class, and if the assets are sufficient to pay them in full, payments on account before bankruptcy but during insolvency, are not preferential."

Now the title to the logs and lumber did not go to the bank, but to the Lumber Company. Young by the hand of the Lumber Co. paid his laborers and what he believed to be lienable claims of parties who had sold him logs. What was done was the same as if Young had paid the laborers himself. The laborers would certainly have filed liens if they had not been paid. If they had not been paid and Young had then gone bankrupt, there would not have been now either logs or lumber or proceeds to litigate over. All would have been eaten up in laborers' claims and costs.

When the transfer was made to the Lumber Co. the lien claimants stood there including the bank to the extent to which it held lienable claims, ready to proceed to enforce payment under the statute. If Young had paid these labor claims directly, could the trustee in bankruptcy have pursued the laborers and recovered of each on the ground that they had never perfected their liens and so had obtained an unlawful preference?

It must have been the understanding that the labor claims and the

unpaid purchase money for the up-river logs should be paid at once.

401 If the amount of these lienable claims could not be recovered back if paid by Young directly, no more can it be recovered when paid by the hand of the Lumber Company.

Where the transfer does not diminish the general fund it is not a preference. Collier, p. 421.

Payments for labor held not to be a preference. *In re* Steers Co. 110 Fed. 738.

The payments of the lienable labor claims did not deplete the estate of Young.

It would be most unjust and inequitable to permit a recovery from the bank for the full value of property standing in place of amounts paid by a third party to preserve the same.

I think the same reasoning is applicable as to the claims for purchase price of the up-river logs on which a very small amount has been paid. Both Young and Clark must have believed that those claims must be paid.

In the case *In re* Laundry Co. 112 Fed. 126, it was held that a trustee in bankruptcy cannot attack the validity of a chattel mortgage on property of the bankrupt which was expressly recognized by the bankrupt in his purchase of the property. In that case it was claimed the chattel mortgage was not executed according to the laws of the state and was void. But the court held that the trustee was in privity with the bankrupt and estopped by the recital in bill of sale from disputing the mortgage.

The reasoning in that case may be applied here. Young and Clark assumed that the purchase price of the logs must be paid. No court should for a moment think of compelling the bank which did not receive it now to repay this money that it might be divided up among the other creditors.

If there could be a recovery for the value of the logs and lumber, not received by the bank, it might be questioned whether a recovery could be had for more than enough to pay all the claims proved in the bankruptcy court and costs of the proceedings. Suppose the total of claims proved was $10,000 and an action were brought to recover a preferential transfer of $50,000. Could the trustee recover the whole $100,000?

402 It is not necessary to decide this question, but it is suggested *for* the amount claimed by plaintiff is double the amount of the claims proved in the bankrupt court.

The following case may have a bearing. *In re* New York Economical Printing Company, 110 Fed. 514, a chattel mortgage was invalid as to only one creditor, for the reason that it was not refiled in one year under the New York statute, Held that the trustee in bankruptcy could avoid it only to the amount of the judgment of the one creditor as to whose judgment it was invalid.

III.

In my opinion the mere taking of a chattel mortgage does not make the bank liable for the whole value of the property. I have been cited to no case holding that the mere act of taking a security

would charge the mortgagee with liability for the value of the property covered by the lien.

Suppose a creditor takes a real estate mortgage for $1000 on a farm worth $10,000. In an action by a trustee to recover the value of the preference, could a recovery be had for $10,000, the value of the farm? Or if the security were of the same amount on property of the same value but personal instead of real estate, would the creditor so securing a preference *be* liable for $10,000 simply because it is held in this state that the technical title passes to the mortgagee in a chattel mortgage?

I cannot think such is the law.

IV.

Can a recovery be had under the allegations of the complaint for what the bank actually received as a preference? It is contended by defendant's counsel that the plaintiff's pleading is framed to charge the defendant with the receipt of the logs and lumber as a preference and not the value of the notes. It is the opinion of this court that a recovery may be had for the value of that which the bank received, the notes.

The complaint fully sets out the facts alleged to constitute a collusive arrangement betwen the defendant, Young and the Lumber Co., and concludes with this allegation: "That by reason of the collusive arrangement and agreement aforesaid, and by means
403 of the said two chattel mortgages and bills of sale, the defendant has within four months prior to June 7th, 1902, appropriated to the payment of its indebtedness substantially all of the property of Young, which property was worth thirty five thousand dollars, and prays judgment for that sum."

All the questions were in fact litigated on the trial, and it would seem that the allegations of the complaint are broad enough to permit a recovery for the value of what was in fact the preference. If this were not so, the court would permit an amendment in accordance with the facts proved, but this appears to the court unnecessary.

V.

The court is of the opinion that plaintiff should have judgment upon the verdict for the value of the notes received as a preference. There is evidence upon which the jury could find that the transaction amounted to a preference and was in violation of the Bankruptcy Law. It is not impeached for any actual fraud upon the part of the bank or its officers. But it was a preference obtained within the four months' period. The court does not feel justified in disturbing the verdict.

There is such a mass of figures in the evidence that I am not sure that I am able to state them correctly. But I believe the amounts as given in the brief of defendant's counsel at p. 29 are correct.

These amounts are:

Proceeds of the lumber	$3452.85
Net proceeds of logs	2508.14
Non-lienable time checks held by the bank	700.00
Total	$6660.99

But the Bank advanced between Feb'y 20th the time when the mortgage was given, and March 29th, the date of the bill of sale, $406 for a non-lienable time check or checks, on the security of the chattel mortgage. This having been advanced in good faith, I am inclined to think that under section 60*a*, it should be deducted from the above sum of $6660.99, leaving a balance of $6254.99. Interest should be added from the commencement of the action. There is evidence of a demand, but I think only a short time elapsed until action was commenced, so that it will make but little difference whether interest is computed from the time of the demand
404 or the commencement of the action.

VI.

The commencement of the action against the Lumber Company is not a waiver of the right to recover in this action.

Stearns *v.* Trust Co. 50 C. C. A. 112 Fed. 501.
Lambkin *v.* Bank, 71 S. W. 715.

VII.

It was stipulated that the court should find the value of the logs and lumber. The court will adopt the figures given by plaintiff's counsel at the oral argument.

VIII.

Counsel for defendant contends that the evidence does not show that the effect of the enforcement of the transfer will be to enable the bank to obtain a greater percentage of its debt than any other creditor of the same class. Bankrupt Act, Sec. 60*a*.

See Defendant's Brief, 29 to 43.

I have not been furnished with a transcript of all the evidence and from my minutes and the statements of the evidence contained in the briefs of counsel, am hardly able to analyze the figures with certainty. I am inclined however, to believe the point not well taken.

IX.

Judgment will be ordered for the plaintiff in accordance with this opinion.

The questions argued have been given patient consideration. It is a relief to know that the case is to be appealed, and that if any error has occurred it will be corrected by a court which has the power to settle the law.

Dated September 18th, 1903.

JAMES O'NEILL, *Judge.*

405 Thereafter and during said term of court, the court denied defendant's motion to amend said verdict and for judgment upon the record, undisputed evidence and verdict as amended, and the defendant thereupon duly excepted to the decision of the court in denying said motion. A written order was entered denying said motion, which order reads as follows:

"Circuit Court, Eau Claire County.

At a regular term of said court, begun and holden at the court house, in the city of Eau Claire, in said county, on the 16th day of March, 1903, and on the 18th day of September, 1903, a day of said term.

Present and Presiding, the Hon. James O'Neill, Circuit Judge.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The defendant having moved the court during said term to amend the special verdict in the following respect,

First. By striking out the answer "yes" to question 4 and by substituting in lieu thereof the answer "no."

Second. By striking out the answer "yes" to question #5 and by substituting in lieu thereof the answer "no."

Third. By striking out the answer "yes" to question #9 and by substituting in lieu thereof the answer "no."

Fourth. By striking out the answer "yes" to question #10 and by substituting in lieu thereof the answer "no."

Fifth. By striking out the answer "yes" to question #11 and by substituting in lieu thereof the answer "no."

Sixth. By striking out the answer "yes" to question #12 and by substituting in lieu thereof the answer "no."

And said defendant having further moved the court for judgment dismissing the plaintiff's complaint, with costs, in favor of the defendant on said special verdict as amended, and on the
406 minutes of the court, the undisputed evidence and the record in said action, and said motions having come on to be heard before said court and having been argued by counsel for the respective parties, and the court having taken said motions under advisement,

It is hereby ordered, that said motions and each of them be, and the same are hereby denied.

By the court,

JAMES O'NEILL, *Judge.*

To the above order and to each and every part thereof and to the refusal of the court to amend said verdict in each of the particulars above mentioned and for judgment, the defendant duly, separately and severally excepted.

By the Court,

JAMES O'NEILL, *Judge.*

The court thereupon made and entered findings of fact and conclusions of law in the case which are of record herein.

The defendant thereafter duly made and filed written exceptions to said findings, which exceptions are as follows:

Title.

"Now comes the above named defendant by Wickham & Farr its attorneys and makes and files the following exceptions to the findings of the court in the above entitled action.

First. Defendant excepts to the first finding of fact of said court and to each and every part thereof for the reason said finding is inaccurate, incomplete and not supported by the evidence.

Second. Defendant excepts to the second finding of fact of said court for the reason that the same is not sustained by the evidence.

Third. Defendant excepts to the third finding of fact of said court for the reason that said finding is on a subject not embraced within the issues of the pleadings and that said court had no right or authority to make said finding, by any agreement or stipulation of the parties, and that said finding is not supported by the evidence.

Fourth. Defendant excepts to the fourth finding of fact
407 of said court for the reason that the same is not supported by the evidence.

Fifth. Defendant excepts to the fifth finding of fact of said court for the reason that said finding is on a subject not embraced within the issues made by the pleadings and that said court had no right or authority to make said finding by any agreement or stipulation of the parties, and that said finding is not supported by the evidence.

Sixth. Defendant excepts to the sixth finding of fact of said court for the reason that the same is not supported by the evidence.

Dated September 29, 1903.

WICKHAM & FARR,
Defendant's Attorneys."

The defendant thereupon during said term and before the entry of judgment therein, duly moved the court on the record and minutes of the court to set aside said verdict and for a new trial, on the ground and for the reason that said verdict is contrary to law and the evidence in the case, for errors of the court in the admission of improper and incompetent evidence on the part of the plaintiff and the rejection of proper and competent evidence offered by the defendant; for errors in the form and sufficiency of the verdict; for errors in the charge of the court and for all other errors appearing on the minutes of the court and the record in the action. The court denied said motion, to which ruling and decision the defendant duly excepted. The court entered an order denying said motion, which order reads as follows:

"Circuit Court, Eau Claire County.

At a regular term of said court, begun and holden at the court house, in the city of Eau Claire, in said county, on the 16th day of

March, 1903, and on the 18th day of September, 1903, a day of said term.

Present and Presiding, the Hon James O'Neill, Circuit Judge.

RALPH W. JACKMAN, Trustee, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

407½ The above entitled action having been tried at said term of court, and special verdict having been rendered therein, and the defendant having moved the court to amend said special verdict and for judgment in favor of defendant, the court having denied said motion, and the defendant having thereupon moved the court on the record and minutes of the court to set aside said verdict and for a new trial, on the ground that said verdict was contrary to the law and the evidence in said case, and for errors of the court in the admission of improper and incompetent evidence on the part of the plaintiff, and the rejection of proper and competent evidence offered by the defendant, and for errors in the form and sufficiency of the verdict and for errors in the charge of the court, and all other errors appearing in the minutes of the court and the record in said action, and said motion having been heard during said term, after said verdict and before the entry of judgment, and the court being advised in the premises,

It is ordered, that said motion be, and the same is hereby denied.

By the Court,

JAMES O'NEILL, *Judge.*

To the above order and to each and every part thereof the defendant duly excepted.

By the Court,

JAMES O'NEILL, *Judge.*"

The court thereupon ordered judgment in favor of the plaintiff for the sum of $6704.28, to which ruling and decision the defendant and the plaintiff each duly excepted.

The court in granting said motion, entered a written order which reads as follows:

STATE OF WISCONSIN:

In Circuit Court, Eau Claire County.

At a regular term of said court, begun and held in the court house in the city of Eau Caire, Wisconsin, and on the 18th day of
408 September, 1903, a day of said term, *a day of said term.*

Present and Presiding, Hon. James O'Neill, Circuit Judge.

RALPH W. JACKMAN, Trustee, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

The above entitled action being at issue and on the calendar for said term and coming on to be heard in its order before the court and a jury; and the jury having rendered a special verdict submitted to it by the court, and the court having filed its findings as to the value of the property described in the complaint, pursuant to the stipulation of the parties; and on the coming in of said verdict, the plaintiff having moved the court thereon and on said findings and the undisputed evidence for a judgment in his favor, for the sum of $23986.53, with interest thereon from the time of the commencement of this action; and the plaintiff having further moved in open court upon said verdict, findings and evidence for a judgment in his favor for the sum of $13530.69, the value of the property embraced in the chattel mortgages described in the complaint, or for the sum of $13825.14, the value of the two notes received by defendant, plus all claims held by defendant on March 29th, 1902, and evidenced by time checks, whether lienable or otherwise, or for the sum of $11398.41 the value of said two notes received by defendant, plus the indebtedness held by defendant on February 20th and evidenced by time checks, whether lienable or otherwise, or for the sum of $7066.69, the sum of said two notes so received by the defendant, plus the sum of $1106.00 the amount of non-lienable claims held by defendant on March 29th, 1902 and evidenced by time checks,
409 or for the sum of $6660.99, being the sum of said two notes, plus $700.00, the amount of non-lienable claims held by defendant on February 20th, 1902, and evidenced by time checks; together with interest on each of said sums from the commencement of the action, all of which said motions, other than the first, were made in the event that each of said other motions were denied; and the court having considered each of said motions, and heard arguments of counsel thereon, and being advised in the premises, now, therefore,

It is ordered, that each of said motions be, and the same hereby are denied, and

It is further ordered that judgment be entered herein on the verdict of the jury and the findings of the court and the undisputed evidence, in favor of the plaintiff and against the defendant, for the sum of $6254.99 with interest thereon from July 7th, 1902, amounting in the aggregate to the sum of $6704.28, together with costs to be taxed by the clerk.

By the court,

JAMES O'NEILL, *Judge.*

To so much of the above and foregoing order, as denies each of the motions of the plaintiff for judgment therein recited, the plaintiff duly and timely accepted. The defendant duly excepted to said order and each and every part thereof.

JAMES O'NEILL, *Judge.*

Judgment was thereafter entered in favor of the plaintiff and against the defendant for $6704.28 damages, and $139.49 costs, amounting in the aggregate to $6843.77, which judgment is of record herein.

The exhibits heretofore referred to which were introduced in evidence, except those heretofore copied, read as follows:

410 DEFENDANT'S EXHIBIT No. 1.

Mill at Cadott *clear*	$4000.
$1000. Ins.	
" " Paint Creek & 40 acres-clear except $200	3500.
1 M M lath 2/3 No. 1—1/3 No. 2	3000.
200 M lumber	1400.
Timber 8 or 10 M M	

Owe:

Ragan	400.
Brooks	200.
Phœnix	200.
Labor	1200.
Empire	100.
	2100.

Dec. 6, 1899.

J. H. YOUNG.

411 DEFENDANT'S EXHIBIT No. 2.

"EAU CLAIRE, WIS., 2/25, 1901.

5 M M shingles 1.50	7500.
900 M lath 2.50	2250.
200 M hardw. lumber 12	2400.
900 M pine " 10	9000.
C. H. Mears & Co.—Chi.	2000.
M. L. Boyles—Keokuk	4000.
N. W. Lbr. Co.	64.
R. B. Salter—Colby	350.
Sundry a/cs good	400.
1 M M logs 6	6000.
200 M h. w. 8	1600.
	35564.
Plant	6000.
Timber 4 M M 3	12000.
Hd.w. " 100 M 4	400.

Men—wages—not over	1000.
Brooks	200.
Phœnix Mfg. Co.	150.
E. C. Grocer Co.	200.
E. C. M. S. Co.	370.
	1920.
E. C. Nat. Bk.	6132.61
Ragan	15315.67
	23368.28

J. H. YOUNG.

412 DEFENDANT'S EXHIBIT No. 3.

In acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car No. ——.

1 million lumber at 10.00	10000.00	
300 M lumber at mill at 9.00	2700.00	
300 M hardwood lumber at $10.00	3000.00	
1 million lath at 300	3000.00	
100 M at mill at 250	250.00	
3 million shingles at 1.50	4500.00	
Miscellaneous accounts	500.00	
C. H. Mears & Co.	750.00	
M. L. Boyls	2000.00	
Rudd & Chase, Cordon, Iowa	1493.91	
Miller Bose & Planing Co., Quincy, Ill.	634.55	
C. R. Noble, Mr. Pleasant, Iowa	544.66	
Ridgeway Lbr. Co.	456.47	
R. B. Saulter	195.74	
Colby Lbr. Co.	165.83	
		30291.16

S. C. Brooks	150.00	Logs on hand 500 M at 6	3000.00
Phœnix Man. Co.	75.00		
Mill Supply Co.	377.00	2 mills	6000.00
J. A. Smith	200.00	Stumpage 4 million feet at 3.00	12000.00
Men at mill	500.00		
E. Claire Grocer Co.	250.00	40 acres land at 6	240.00
	1552.00		51531.16

J. H. YOUNG.

413 DEFENDANT'S EXHIBIT No. 4.

"CADOTT, WIS., *July* 5, 1901.

In acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car No. ——.

1½ million feet lumber in yard at 10.00	15000.00	
300 M at mill at 7.00	2100.00	
300 M hardwood at 10.00	3000.00	
500 M lath at 250	1250.00	
2 million shingles at 125	2500.00	
		23850.00
Miscellaneous Accounts	500.00	
C. H. Mears & Co.—Chi.	750.00	
M. S. Boyls—Keokuk	1500.00	
Rudd & Chase—Corydon, Io.	1493.91	
Miller Bose & Planing Co.—Quincy	634.55	
Ridgeway Lb. Co.—Bedford, Io.	250.00	
Colby Lb. Co.—Colby	165.00	
J. H. Greene—Seymour, Io.	228.00	
Geo. P. Noble—Milw.	726.00	
W. E. Lyon & Co.—Carthage, Ill.	277.07	
S. D. Flagg—Louisiana	264.10	
Maxwell & Orlady—Durand	237.60	
John W. Burnett—Clayton, Ill.	293.50	
C. S. Jones	353.00	
L. E. Hazen	310.25	
R. B. Saulter-Colby	597.95	
		8570.93
		32420.93

Indebtedness:

S. C. Brooks	200.00	2 mills	5000.00
Pœnix Manufacturing Co.	75.00	3 million pine 3.00	9000.00
Mill Supply Co.	377.00	300 M hardwood 3.00.	1500.00
J. A. Smith	200.00	40 acres land	200.00
Faulkine	15.00	4 pr. Sleighs at $50	200.00
Dietzl	125.00	1 wagon at $40.00	40.00
Delmore	30.00	3 carts at 50.00	150.00
Hadley	25.00	3 pr. at 40.00	120.00
Monroe	75.00	50 pr. blankets at 1.50.	75.00
Roden	15.00	2 stoves at 30.00	60.00
John Ward	6.00	2 loading chains 18.00	36.00
Ge Houre	30.00	Chains for sleighs, &c.	100.00
		Blacksmith outsift	75.00
	1173.00	1 horse, team and harness	250.00
			49226.93

413½ DEFENDANT'S EXHIBIT No. 4.

Ragan D.....	4466.26
" "	4350.96
" "	6593.31
Time 7/15	5226.07
	20636.60
E. C. N. Bk. D.....	4301.83

414 DEFENDANT'S EXHIBIT No. 5.

"CADOTT, WIS., ——, 190–.

Set 1st, 1901.

In Acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car No. ——.

1 million 600 M pine at 10.00.....	16000.00	
100 M at Mil. at 7.....	700.00	
300 M hardwood at 10.00.....	3000.00	
1 million shingles at 1.00.....	1000.00	
129 M lath at 200.....	322.50	
Miscellaneous seconds	600.00	
C. H. Mears & Co.....	500.00	
M. L. Boyles	1000.00	
C. H. Mears & Co.....	500.00	
Rudd & Chase	1000.00	
Miller Bose & Planing Co.....	475.00	
Rudgeway Lbr. Co.	275.00	
J. H. Greene	20.00	
Geo. P. Noble	368.20	
W. E. Lyon & Co.....	250.00	
S. D. Flagg	264.10	
John W. Burnett	295.75	
B. J. Kimball	293.50	
L. E. Hazen	310.25	
R. B. Saulter	295.19	
		27469.49

S. C. Brooks	100.00	2	5000.00
Mill supply	377.00	4 million pine at 2.50.	10000.00
J. A. Smith	245.00	5 hundred M H'wood 5.00	2500.00
Hanley Lumb	150.00	40 acres land 5.00	200.00
Laird & Norten	200.00	4 prs. sleighs 50.00	200.00
	1072.00	2 wagons	60.00
		4 carts at 50.00	200.00
		3 pr. trucks 40	120.00
		50 pr. blankets 1.50	75.00
		2 stoves 30.00	60.00
		a loading chains	36.00
		Chains for sleighs, &c.	100.00
		Blacksmith outfit	75.00
		1 Road Ruth	75.00
		40 tons hay at 8.00	320.00
		1 team and harness	250.00
			46740.49

415 DEFENDANT'S EXHIBIT No. 6.

"CADOTT, WIS., *Oct.* 11*th*, 1901.

In Acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car No. ——.

Peter Dutzh for plainer			45.00	
Mill Supply Co.			377.00	
S. C. Brooks			80.00	
Eau Claire Gro. Co.			100.00	
Gust Valdnokin for working in yard			35.00	
J. A. Smith for Insurance			245.00	
Nathan Jones for hauling lumber & shingles			73.00	
Fred Faulkin			50.00	
				1005.00
40916—E. C. Nat. Bk.—D				4298.83
42639 Ragan		D	1424.80	
44933 "		D	6593.31	
45851 "		D	5236.07	
43430 "		D	4176.46	
Orders "	10/15		361.66	
				17792.30
				23096.13

1 million 200 M pine at 10.00	12000.00
300 M hardwood at 10.00	3000.00
500 M shingles at 1.00	500.00
100 M lath at 2.50	250.00
C. H. Mears	500.00

M. L. Boyls	960.00	
Rudd & Chase	481.00	
Mullner Bose & Planing Co.	375.00	
Ridgeway Lbr. Co.	275.00	
Geo. P. Noble	300.00	
W. E. Lyon & Co.	250.00	
S. D. Flagg & Co.	264.00	
John W. Burnett	295.75	
R. B. Saulter	295.19	
Maxwell & Orlady	150.00	
Wm. Osborne	83.10	
L. E. Jackson	22.30	
Wm. Cassodey	22.37	
Charles Feltz	30.39	
Fred Crowl	49.49	
R. W. Faulkner	11.13	
		20114.72
H. C. Hurlburt	12.30	
Frank Goodman	26.25	
Ole Jensen	34.92	
James Lewis	12.65	
Fritz Miller	25.64	
Barney Martin	6.28	
John McGivern	26.11	
John Oakland	14.50	
Wm. Richardson	15.44	
Wm. Raymond	13.98	
Wm. Tifney	19.95	
Wm. Schultz	12.35	
Town of Seigel	30.50	
John Spoon	19.16	
Peter Teautan	18.43	
Godfrey Valdoskie	25.07	
Judge Wiltz's estate	60.97	
School District # 7	11.38	

416 DEFENDANT'S EXHIBIT NO. 6.

Sam Cameron	76.87	
John Joserk	22.00	
Mat Dietrick	2.39	
		487.14
Si Harris	73.23	
Robert Lelb	30.38	
Geo. Carroll	8.82	
Geo. Lantz	11.00	
Brewley & Co.	4.20	
S. J. Dietzler	1.23	
Raney McDonald	6.05	
Burt Kennedy	157.30	
Frank Craig	24.14	

Frank Pickett	5.19	
A. Adams	35.00	
Ben Diebruh	12.75	
F. J. Laville	13.00	
S. R. Kieser	25.74	
Mrs. W. S. Monroe	27.49	
Colby Lb. Co.	150.00	
Edward Hadley, Jr.	21.17	
Uz Lurk & Hudson	325.75	
John W. Spence, Hamilton, Ill	150.00	
Stevens Point Box Co.	498.20	
		1590.60
2 mills	5000.00	
4 million pine at 3.00	12000.00	
300 M hardwood standing at 5.00	1500.00	
40 acres of land	200.00	
4 prs. sleighs at 50.00	200.00	
2 wagons at 40.00	80.00	
3 carts at 50.00	150.00	
3 prs. trucks at 40.00	120.00	
50 prs. blankets at 1.50	75.00	
3 stoves at 20.00	60.00	
2 loading chains	36.00	
Chains for sleighs	50.00	
Blacksmith outfit	75.00	
1 team and harness	250.00	
1 road ruth	75.00	
40 tons hay at 8.00	320.00	
		20191.00
		42383.46

J. H. YOUNG.

417 DEFENDANT'S EXHIBIT No. 7.

CADOTT, WIS., *Nov.* 19, 1901.

In Acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car No. ——.

1 million pine at 10.00	10000.00
300 M hardwood at 10.00	3000.00
500 M shingles at 1.00	500.00
100 M lath at 2.50	250.00
Mullner, Bose & Plaining Co., Quincy	160.30
C. R. Noble	216.76
S. D. Mattingly	263.11
National Box Co., Chi.	209.12
Rudd & Chase, Corydon, Io.	50.00

Ridgeway Lbr. Co., Bedford, Io.	216.67	
D. S. Flagg, Louisiana, M.	207.26	
W. E. Lyon & Co., Carthage, Ills.	250.00	
Geo. P. Noble, Milw.	212.50	
J. H. Greene, Seymour, Io.	20.00	
B. J. Kimball	200.83	
Chas. H. Mears & Co., Chi.	315.54	
M. L. Boyles, Keokuk	960.00	
John W. Burnett	295.75	
R. B. Saulter, Colby	295.19	
John S. Spence	150.00	
Moscwell & Orlady, Durand	250.00	
Colby Lbr. Co., Colby	150.00	
		18483.03
Wm. Osborne	83.10	
L. E. Jackson	22.30	
Wm. Cassody	26.37	
Charles Feltz	30.39	
R. W. Faulkner	11.13	
Si Harris	50.00	
Robert Silb	90.59	
Geo. Carroll	8.82	
Geo. Loutz	11.00	
Bruley & Co.	4.20	
A. J. Dietzle	1.23	
Raney McDonald	6.05	
Burt Kennedy	157.30	
Frank Craig	24.14	
Frank Pickett	5.19	
Ben Dietrick	12.75	
F. J. Laville	69.41	
S. R. Kaeser	25.74	
Mrs. W. S. Monroe	27.49	
Edward Hadley, Jr.	43.75	
School District No. 7	11.38	
		721.34
Mat Dietrick	2.39	
John Jarmk	22.90	
Sam Cameron	85.33	
Wm. Gilbert	5.68	
John Lawson	2.38	
Fritz Valdorki	12.20	
Village of Cadott	80.00	
Wm. Clark	10.48	
Peter Burk	19.60	
H. C. Hurlbut	12.70	

418 DEFENDANT'S EXHIBIT No. 7.

J. Jensen	34.92	
O. Linn	4.50	
Town of Siegel	27.00	
James Lewis	12.65	
Elick Larson	5.60	
John McGovern	26.11	
Charles Marrim	18.75	
Wm. Richardson	2.20	
Wm. Tifney	20.00	
Wm. Schultz	12.35	
John Sponn	19.16	
Peter Teautant	18.43	
Godfrey Valdeski	25.07	
Judge Witze estate	60.97	
2 Mills at $2500	5000.00	
4 million pine at 3.00	12000.00	
300 M hardwood at 5.00	1500.00	
40 acres land	200.00	
4 pr. sleighs at 50.00	200.00	
3 wagons at 40.00	120.00	
3 carts at 50.00	150.00	
3 pr. trucks at 40.00	120.00	
50 pr. blankets at 1.50	75.00	
2 stoves at 30.00	60.00	
2 loading chains 18.00	36.00	
Chains for sleighs	50.00	
Blacksmith outfit	75.00	
2 teams and harness	400.00	
1 road rutter	75.00	
40 tons hay at 8.00	320.00	
		20505.47
J. A. Smith	200.00	
Drummond Bros.	40.00	
Eau Claire Gro. Co.	200.00	
Swift & Co.	13.50	
J. E. Ragan time checks	383.00	
Dells mill	75.00	
Standard Oil Co.	5.40	
Mill Supply Co.	376.00	
	1292.90	
E. C. Nat. Bk.	4298.83	
Ragan	16685.19	
Dells Milling Co.	50.00	
	22326.92	

419 DEFENDANT'S EXHIBIT No. 8.

CADOTT, WIS., *Jan.* 1, 1902.

In Acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——.	Car No. ——.
2 mills at $2500.00	5000.00
4 million pine timber at 3.00	12000.00
300 M hardwood at 5.00	1500.00
40 acres of land	200.00
4 prs. sleighs at 50.00	200.00
2 wagons at 40.00	80.00
3 carts at 50.00	150.00
3 prs. trucks at 40.00	120.00
50 pr. blankets at 1.50	75.00
2 stoves at 30.00	60.00
2 loading chains	36.90
Chains for sleighs	50.00
Blacksmith outfit	75.00
1 team and harness	250.00
1 road rutter	75.00
40 tons hay at 8.00	320.00
1 million pine lumber at 10.00	10000.00
200 M hardwood lumber at 10.00	2000.00
500 M shingles at 1.00	500.00
150 M lath at 2.50	375.00
C. H. Mears	280.00
M. L. Boyls	960.00
Rudd & Chase	250.00
Mullner Bose & Planing Mill Co.	150.00
Ridgeway Lbr. Co.	175.00
Geo. P. Noble	150.00
S. D. Flagg	264.00
L. E. Hazen	175.00
R. B. Saulter	295.00
Maxwell & Orlady	150.00
John S. Spence	150.00
Colby Lumber Co.	150.00
Ridgeway Lumber Co.	275.00
Si Harris	73.23
Robert Silb	30.38
Burt Kennedy	157.30
Ben Detrick	30.50
T. J. Laville	70.25
S. R. Kieser	25.74
S. D. Matingly	263.11
W. J. Burs, Golder, Ill	198.14
Village of Cadott	96.95
Town of Seigel	35.75
Osborn & Clark	350.00
	$37,821.35

DR.

Mill Supply Co.	377.00	
S. C. Brooks	55.00	
J. A. Smith	300.00	
Eau Claire Gro. Co.	250.00	
Swift & Co.	38.00	
Drummond Bros.	50.00	
W. J. Davis	105.00	
		$1175.00

J. H. YOUNG.

420 CADOTT, WIS., *Dec.* 31*st*, 1901.

In Acc't with J. H. Young, Manufacturer of Lumber, Lath and Shingles.

Terms ——. Car. No. ——.

Mr. W. K. Coffin, Eau Claire.

DEAR SIR: Enclosed find statement. Will see you to-morrow sometime and give you the amount of logs I had in up to last Saturday night.

Yours respectfully, J. H. YOUNG.

421 PLAINTIFF'S EXHIBIT L.

CADOTT, WIS., *Feb.* 1*st*, 1902.

(Assets:)

800 M Pine lumber at 10.00	8000.00
200 M hardwood lumber at 8.00	1600.00
200 M Lath at 3.00	600.00
600 M shingles at 1.50	900.00
2 mills at 2500	5000.00
2 million pine at 3.00	6000.00
300 M hardwood at 3.00	900.00
40 acres of land at 7.00 acre	280.00
6 prs. sleighs at $50.00	300.00
3 wagons at 40.00	120.00
4 carts at 50.00	200.00
3 prs. trucks $60.00	180.00
75 prs. blankets at 1.50	112.50
2 stoves at 30.00	60.00
3 loading chains at 18.00	54.00
Chains for sleighs	75.00
Blacksmith outfit	75.00
2 teams and harness	450.00
1 logging rutter	75.00
20 tons of hay at 8.00	160.00
1 light road sleigh	20.00
1 horse, buggy and cutter	150.00

	1384000 feet logs banked in Yellow River at 8.00 M.....	11072.00
	250 M on skids in woods at 5.00.....	1250.00
	M. L. Boyls	960.00
	C. H. Mears & Co.....	350.00
	Miller, Bosc & Planing Co.....	110.01
	D. S. Flagg	209.26
	B. J. Kimball	203.83
	National Box Co.	209.12
	S. D. Mattingby	263.11
	R. B. Salter	380.45
	Mrs. W. S. Monroe.....	27.49
	L. R. Kieser	25.72
	J. F. Lavelle	81.46
	B. Dietrit	11.99
	Frank Pickett	5.19
	Bert Kennedy	150.00
	Robert Silt	92.00
	Si Harris	61.57
	Village of Cadott	52.50
	L. E. Jackson	45.50
	Mat Dietriet	2.39
	John Johenk	22.90
	School District # 7.....	11.38
	Ed Hadley	43.77
	John W. Burnett	295.19
	Peter Burk	19.60
	Wm. Cassody	26.37
	Charles Feltz	35.23
	S. W. Faulkner	15.93
	Harley Faulkine	34.03
	H. C. Hurlbut	12.70
	Wm. Jensen	34.92
	O. Linn	4.50
	James Lewis	12.90
	Alex Larsen	5.60
	Barney Martin	6.28
	John McGivern	26.11
421*a*	Gilbert Mickelson	2.94
	Albert Miller	14.00
	Charles Marriner	18.75

422 EXHIBIT L.

John Oaklund	14.50
Wm. Richardson	17.64
Wm. Raymond	13.98
Wm. Tiffany	31.93
Wm. Schultz	12.35
Town of Seigel	23.12
John Sponn	19.16
Peter Teautar	18.40
Godfrey Waldeskie	25.07

Sam Williams	5.74
Judge Wetze's estate	60.97
D. W. Higgbie	284.12
D. M. Goodnew & Co.	195.95
	42241.25

(Debts:)

Eau Claire Grocer Co.	400.00
Dells Milling Co.	50.00
A. A. Cutter	35.00
Nichols & Dean	62.24
C. W. Cheeney & Co.	82.50
Herman T. Lange	22.03
Eau Claire Mill Supply Co.	377.00
J. A. Smith	300.00
	1328.77

(Labor:)

August Gustman	7.55
S. Loutz	44.62
H. Kilpatrick	29.00
Wm. Morgan, Jr.	6.50
A. Sapp	29.00
Saul Petrew	17.00
Wm. Rader	38.00
Dick Rade	58.00
Wm. Morgan	55.00
C. Baker	3.77
John Stein	52.00
Peter Nelson	30.00
John Metcalf	63.00
Gust Waldeskie	4.50
Fred Crowl	24.70
Wm. McDonald	30.00
Sam Cameron	3.74
Wm. Conez	25.00
H. Kilpatrick, Jr.	4.00
Gust Lillett	30.00
John McGivins	28.50
Irvine Cony	12.62
Eddie Waldeskie	33.09
M. Dowd	100.00
Claire Downing	8.00
Louie Rath	20.00
Wm. Nogle	20.00
John Dolan	45.00
	822.59

423 PLAINTIFF'S EXHIBIT O.

$361.66. EAU CLAIRE, WIS., *Oct.* 15, 1901.

On demand after date for value received I promise to pay to the order of J. E. Ragan, three hundred sixty-one & 66/100 Dollars at Eau Claire National Bank, with interest at the rate of 8 per cent. per annum, until paid.

J. H. YOUNG.

(Endorsements:) 46598. Demand J. H. Young 361.66. I. Protest waived. J. E. Ragan.

424 PLAINTIFF'S EXHIBIT P.

$5236.07. EAU CLAIRE, WIS., *July* 15, 1901.

On demand after date for value received I promise to pay to the order of J. E. Ragan, fifty two hundred thirty six & 7/100 Dollars at Eau Claire National Bank, with interest at the rate of 8 per cent. per annum, until paid.

J. H. YOUNG.

(Endorsements:) 45851. Demand J. H. Young 5236.07 & I. Protest waived. J. E. Ragan. 12/28/'01. Paid. 622.14.

425 PLAINTIFF'S EXHIBIT Q.

$6593.31. EAU CLAIRE, WIS., *April* 15, 1901.

On demand after date for value received I promise to pay to the order of J. E. Ragan, sixty-five hundred ninety-three & 31/100 Dollars at Eau Claire National Bank, with interest at the rate of 8 per cent. per annum, until paid.

J. H. YOUNG.

(Endorsements:) 44933. Demand J. H. Young. $6593.31. I. J. E. Ragan. 11/14/01 Pd. 81.47.

426 PLAINTIFF'S EXHIBIT R.

$4350.96. EAU CLAIRE, WIS., *Jan'y* 1, 1901.

On demand after date for value received I promise to pay to the order of J. E. Ragan, forty three hundred fifty & 96/100 dollars at Eau Claire National Bank, with interest at the rate of 8 per cent. per annum, until paid.

J. H. YOUNG.

(Endorsements:) 43430. Demand J. H. Young 4350.96. I. Protest waived. J. E. Ragan. 7/24/01. Paid 174.50. 4/5/02. 725.81.

427 PLAINTIFF'S EXHIBIT S.

$4902.98. EAU CLAIRE, WIS., *Oct.* 15, 1900.

On demand after date for value received I promise to pay to the order of J. E. Ragan, Forty nine hundred two & 98/100 Dollars at Eau Claire National Bank, with interest at the rate of 8 per cent. per annum, until paid.

J. H. YOUNG.

(Endorsements:) 42639. Demand J. H. Young 4902.98. I. Protest waived. J. E. Ragan.

4/27/01	Pd.	296.72.
5/19/01	"	140.00.
7/6/01	"	162.09.
7/11/01	"	134.78.
7/13/01	"	191.80.
7/19/01	"	148.57.
7/22/01	"	171.12.
8/8/01.	"	188.32.
8/12/01	"	150.43.
"	"	161.47.
8/17/01	"	500.00.
8/21/01	"	229.93.
8/23/01	"	194.62.
"	"	223.01.
9/10/01	"	347.02.
9/19/01	"	88.30.
9/27/01	"	150.00.
10/12/01	"	498.20.
10/17/01	"	147.45.
10/24/01	"	212.66.
10/29/01	"	322.56.

428 PLAINTIFF'S EXHIBIT T.

$8,000. EAU CLAIRE, WIS., *April* 2, 1900.

On demand after date I promise to pay to the order of Eau Claire National Bank at its office in the city of Eau Claire, Wis., eight thousand dollars, for value received with interest at the rate of 8 per cent. per annum until paid.

J. H. YOUNG.

(Endorsements:) 40916. Demand J. H. Young 8000. I.

11/15/00	Paid	327.74.
11/27/00	"	500.00.
1/16/01	"	146.64.
1/19/01	"	356.31.
1/21/01	"	400.00.
2/2/01	"	136.70.
2/16/01	"	137.61.
2/25/01	"	144.26.
3/4/01	"	625.00.
3/25/01	"	251.43.
6/14/01	"	276.48.
6/21/01	"	396.00.
7/5/01	"	3.00.
11/27/01	"	153.49.
		3854.66.
3/7/02	"	3452.85.

429 PLAINTIFF'S EXHIBIT U.

$15,900. EAU CLAIRE, WIS., *Feb.* 10, 1902.

On demand after date I promise to pay to the order of Eau Claire National Bank at its office in the city of Eau Claire, Wis., Fifteen Thousand nine hundred Dollars for value received with interest at the rate of 6 per cent. per annum until paid.

J. H. YOUNG.

430 PLAINTIFF'S EXHIBIT V.

$11,100. EAU CLAIRE, WIS., *Feb.* 10, 1902.

On demand after date I promise to pay to the order of Eau Claire National Bank at its office in the City of Eau Claire, Wis., Eleven Thousand one hundred dollars, for value received with interest at the rate of 6 per cent. per annum until paid.

J. H. YOUNG.

431 And because the foregoing evidence which is all the evidence taken on the trial of said action, and because the foregoing proceedings, rulings, decisions and exceptions do not appear of record in said action, I, the undersigned judge of said court, before whom said action was tried, have signed and settled the within and foregoing as the bill of exceptions in said case, and I do hereby certify that said bill of exceptions contains all the evidence taken on the trial of said action, and all the rulings, proceedings, decisions and exceptions made and taken in said action.

Dated this 6th day of August 1904.

JAMES O'NEILL,
Circuit Judge of the Seventeenth Judicial Circuit of the State of Wisconsin.

It is stipulated that the foregoing be signed and settled as the bill of exceptions herein by the judge of said court without notice to either party.

Dated August 4th, 1904.

BUNDY & WILCOX,
Attorneys for Plaintiff.
WICKHAM & FARR,
Attorneys for Defendant.

432 (Endorsements:) State of Wisconsin, Circuit Court Eau Claire County. R. W. Jackman, Plaintiff, against Eau Claire National Bank, Defendant. Bill of Exceptions. Filed Feb. 15, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

433 Circuit Court, Eau Claire County.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

STATE OF WISCONSIN, *Eau Claire County, ss:*

I, the undersigned clerk of the circuit court of Eau Claire County, do hereby certify that the annexed bill of exceptions is the original bill of exceptions in the above entitled action; that the same has been filed in my office, and that said bill of exceptions is transmitted to the supreme court pursuant to the appeal heretofore taken in said action, and as a supplemental return on said appeal.

In witness whereof, I have hereunto set my hand and affixed the seal of the circuit court of Eau Claire County, this 14th day of February, 1905.

GEORGE J. LOSBY,
[SEAL.] *Clerk of Circuit Court, Eau Claire County, Wis.*

433½ [Endorsed:] State of Wisconsin, Circuit Court, Eau Claire County. Ralph W. Jackman, trustee &c., Plaintiff, against Eau Claire National Bank, Defendant. Supplemental Return on appeal to Supreme Court. Filed Feb. 15, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

434 And afterwards, to-wit: on the fourteenth day of March, A. D. 1905, the same being the fourteenth day of said term, the following proceedings were had in this court, in said cause, that is to say:

Eau Claire Circuit Court.

RALPH W. JACKMAN, as Trustee, &c., Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

(Cross Appeals.)

And now at this day came the parties herein by their attorneys, and this cause having been argued by James Wickham, Esq., for the said defendant, and by C. T. Bundy, Esq., for the plaintiff, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

435 And afterwards, to-wit: on the twenty-third day of June, A. D. 1905, the same being the thirty-seventh day of said term, judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

Eau Claire Circuit Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Appellant,
vs.
EAU CLAIRE NATIONAL BANK, Respondent.

Opinion by Justice Kerwin.

This cause came on to be heard on appeal from the judgment of the circuit court of Eau Claire county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the judgment of the circuit court of Eau Claire county, in this cause, be and the same is hereby affirmed, with costs against the said appellant taxed at the sum of seventy and 5/100 dollars ($70.05).

Eau Claire Circuit Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Appellant.

Opinion by Justice Kerwin.

This cause came on to be heard on appeal from the judgment of the circuit court of Eau Claire county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the judgment of the circuit court of Eau Claire county, in this cause, be and the same is hereby affirmed, with costs

against the said appellant taxed at the sum of one hundred and 25/100 dollars ($100.25).

436 And thereupon this court, by Justice Kerwin, filed its opinion in said cause, in the words and figures following, that is to say:

437 STATE OF WISCONSIN:

In Supreme Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

Cross Appeals.

This action was brought by Ralph W. Jackman, trustee of the estate of John H. Young, to recover the value of property transferred as a preference under section 60*b*, bankrupt act. The complaint alleges, in effect, that on the 7th day of June, 1902, John H. Young, of Eau Claire, Wisconsin, filed a petition in bankruptcy and was adjudged to be a bankrupt, and on the 23rd day of June, 1902, the plaintiff was elected and appointed by the creditors of said Young as trustee, and such appointment was duly approved; that the plaintiff duly qualified and entered upon his duties as such trustee and brings this action in such capacity; also alleges the corporate existence of defendant, the ownership by Young of logs, lumber, shingles and lath worth the sum of $35,000 and other property not exceeding $500; that on February 10th, 1902, Young was wholly insolvent; that the aggregate of his indebtedness was $40,000 and the value of his property $35,000; that on February 10th, 1902, he was indebted to the defendant in the sum of $27,000 for money borrowed from time to time during a period of about two years prior to that date; that on February 10th, 1902, he made two chattel mortgages to defendant, one for the sum of $15,000, and the other for the sum of $11,000, to secure the payment of said amounts then owing by him to defendant; that the property so transferred to defendant consisted of substantially all the property then owned by

438 Young, not by law exempt, which facts were well known to defendant, its officers and agents; that the effect of the enforcement and foreclosure of said mortgages would be to enable defendant to obtain a larger percentage of its debt than would other creditors of said Young, and that said mortgages were given for the purpose of hindering and delaying the other creditors of said Young; that defendant at the time of the execution of said mortgages, February 10th, 1902, had reason to believe that the same were given with the intention of giving defendant a preference; the complaint further alleges the corporate existence of the Waters-Clark Lumber Company, and that on the 10th day of March, 1902, at the special instance and request of defendant Young transferred by bills of sale to said

Waters-Clark Lumber Company, for the benefit of defendant, all the property covered by said chattel mortgages, together with other property, which property was of the value of $35,000; that said bills of sale were not executed as provided by chapter 80 Stats. of 1898, and no bond was given as required by section 1694 Stats.; that except as to the agreement of said Waters-Clark Lumber Company to pay said indebtedness no consideration was paid by it for said property and nothing was paid to Young at the time of the transfer; that immediately upon the execution of said bills of sale said Waters-Clark Lumber Company acting pursuant to direction of defendant took possession of and sold said property, applying the proceeds to the payment of defendant's indebtedness secured by said mortgages, and that defendant and its officers knew that the property so transferred constituted all the available assets of said Young, and that such transfer and appropriation would result in the loss by other creditors of all their indebtedness; that said Waters-Clark Lumber Company was in reality acting as the trustee for defendant and with the understanding that it would account to defendant for the proceeds of the property transferred to the amount of its
439 indebtedness, and that the amount realized in excess of said indebtedness would be paid to said Young; the complaint further alleges, among other things, that by reason of the collusive arrangement and agreement, aforesaid, and the chattel mortgages and bills of sale the defendant appropriated to the payment of its indebtedness substantially all the property of said Young of the value of $35,000, and that there is no other property in the possession of said trustee or belonging to said Young out of which the creditors of said Young can be paid, and that it is necessary to enable plaintiff to pay anything to the other creditors to recover from said defendant the value of the property so by it appropriated by means of said transfer.

Plaintiff prays judgment for $35,000, and costs.

To this complaint defendant demurred for want of jurisdiction of the subject matter, that plaintiff had no legal capacity to sue, defect of parties plaintiff and defendant, and want of facts sufficient to constitute a cause of action. The court overruled the demurrer and defendant answered admitting that on June 7, 1902, Young was adjudged a bankrupt, and on the 23rd of June, 1902, plaintiff was appointed trustee and qualified as such, and that defendant during the times mentioned in the complaint was a banking corporation duly organized; that Young executed the chattel mortgages referred to in the complaint; that in March, 1902, Young sold to the Waters-Clark Lumber Company logs covered by one mortgage and certain other logs, and that a portion of the proceeds was paid to defendant to discharge existing liens held against said property, and denying other material allegations of the complaint, and alleging that the mortgages were given for a valuable consideration and were not made, given or received for the purpose of giving defendant a preference; and further alleging that prior to the commencement of the action plaintiff commenced an action against the Waters-
440 Clark Lumber Company to recover the purchase price of the logs and other material sold by said Young to said company,

and thereby elected to look to and hold said company instead of defendant as liable to said trustee. The action was tried before the court and a jury and the following verdict returned by the jury.

1. Was the property of Young on February 20th, 1902, when the chattel mortgages were executed, at a fair valuation sufficient in amount to pay his debts?

Answer. No.

2. Was the property of Young on March 3rd, 1902, when the lumber was transferred, at a fair valuation sufficient in amount to pay his debts?

Answer. No.

3. Was the property of Young on March 29th, 1902, when the logs were transferred, at a fair valuation sufficient in amount to pay his debts?

Answer. No.

4. Did the Waters-Clark Lumber Company, acting for the bank and pursuant to an arrangement between the said Lumber Company and the bank, take the legal title to the lumber in question for the benefit of the defendant under an agreement with Young and the defendant to account for it for a portion of the proceeds?

Answer. Yes.

5. Did the Waters-Clark Lumber Company, acting for the bank and pursuant to an arrangement between said Lumber Company and the bank, take the legal title to the logs in question for the benefit of the bank under an agreement with Young and the defendant to account to it for a portion of the proceeds?

Answer. Yes.

6. Was it the intention of Young, by the execution of the chattel mortgages to the bank to give the bank a preference, that
441 is, to enable the defendant to obtain a greater percentage of its debt than any other creditors of Young, of the same class?

Answer. Yes.

7. Was it the intention of Young by the transfer of the lumber to the Waters-Clark Lumber Company to give the bank a preference?

Answer. Yes.

8. Was it the intention of Young by the transfer of the logs to the Waters-Clark Lumber Company to give the bank a preference?

Answer. Yes.

9. Did the agents of the bank acting therein when the chattel mortgages were executed to it have reasonable cause to believe that Young intended thereby to give the bank a preference, that is, to enable the bank to obtain a greater percentage of its debt than any other of Young's creditors of the same class would be able to obtain?

Answer. Yes.

10. Did the agents of the bank, acting therein when the lumber was transferred to the Waters-Clark Lumber Company, have reasonable cause to believe that Young intended thereby to give the bank a preference?

Answer. Yes.

11. Did the agents of the bank, acting therein when the Cadott logs were transferred to the Waters-Clark Lumber Company, have reasonable cause to believe that Young intended thereby to give the bank a preference?

Answer. Yes.

12. Did the officers or agents of the bank, acting therein when the upper logs were transferred to the Waters-Clark Lumber Company, have reasonable cause to believe that Young intended thereby to give the bank a preference?

442 Answer. Yes.

It was stipulated in open court that the following facts found by the court should be deemed and considered as part of the special verdict:

1. I find that the value of the lumber, lath and shingles embraced in the chattel mortgages given by John H. Young to the defendant and dated February 10th, 1902, was something in excess of the sum of $3452.85.

2. I find that the value of the lumber alone embraced in said mortgage and which was subsequently transferred to the Waters-Clark Lumber Company, on or about March 3rd, 1902, was $3452.85.

3. I find that the value of the note given by Waters-Clark Lumber Company to Young and by him turned over to the defendant for said lumber was $3452.85.

4. I find that the value of the so-called Cadott logs which were embraced in the chattel mortgage given by John H. Young to the defendant, and dated February 10th, 1902, was $10,077.84

5. I find that the value of the note given by Waters-Clark Lumber Company to Young, and by him transferred to the defendant on or about March 29th, 1902, such note being a part of the purchase price named in the bill of sale for the logs belonging to said Young, was $2508.14.

6. I find that the value of the so-called up river logs which were transferred by bill of sale from Young to Waters-Clark Lumber Company, on or about March 29th, 1902, was $11,055.84.

It was also stipulated that the amount of lienable claims due laborers on Cadott logs and lumber, paid out of the proceeds of the sale thereof, was $8,212.35.

That the amount of lienable claims due laborers on upper logs, paid out of the proceeds of sale thereof, was $6,052.46.

That the amount paid William McKinnon for balance due
443 on purpurchase price of logs as per contract recorded in Lumber inspector's office was $2,627.95.

That the amount paid to other persons as purchase price of other up river logs was $1,039.81.

That the amount of lienable claims held by defendant on February 20, 1902, was $4,737.42.

That the amount of lienable claims held by defendant on March 29, 1902, was $6,758.15.

That the amount of non-lienable claims held by defendant February 20, 1902, not including notes, was $700.

That the amount of non-lienable claims held by defendant March 29, 1902, not including notes, was $1,106.

That the total amount received by defendant on claims held by it February 20, 1902, not including what was paid on lienable labor orders, was $6,660.99, which was made up of the following items:

Note of Waters-Clark Lumber Company, given to pay purchase price of logs	$2508.14
Note of Waters-Clark Lumber Company, given as purchase price of lumber	3452.85
Non-lienable time checks held by bank Feb. 20, 1902	700.00
	$6660.99

It was further stipulated that all material questions of value of the property in question under the issues raised by the pleadings should be passed upon and decided by the court without being submitted to the jury and the court's findings should be considered with the special verdict.

Motion was made by defendant for a direct verdict to amend the verdict and for judgment upon the verdict as so amended.

Plaintiff made several motions for judgment as follows:

I. The amount asked by the first motion, $23,986.53 and interest, was made up:

444 Value of Cadott logs	$10,077.84
Value of up-river logs	11,055.84
Value of lumber transferred, exclusive of lath and shingles	3,452.85
	$24,586.53
Less 60,000 feet of lumber sold, which Waters-Clark Lbr. Co. did not get	600.00
	$23,986.53

2. The amount asked by the second motion, $13,530.69 and interest was made up:

Value of Cadott logs embraced in chattel mortgage to bank	$10,077.84
Value of lumber embraced in chattel mortgage to bank	3,452.85
	$13,530.69

3. The amount asked by the third motion, 13,825.14 and interest, was made up:

Value of Waters-Clark Lumber Co. note, given as purchase price of lumber	$3,452.85
Value of Waters-Clark Lumber Co. note, given as difference between purchase price of logs and amount of unpaid labor orders against them	2,508.14

Amount of time orders, whether lienable or otherwise held by bank March 29, 1902, which were paid by Waters-Clark Lumber Co. as part of purchase price of property	7,864.15
	$13,825.14

4. The amount asked by the fourth motion, $11,398.41 and interest, was made up:

Value of Waters-Clark Lumber Co. note for lumber..	$3,452.85
Value of Waters-Clark Lumber Co. note, for balance of proceeds of logs over and above labor claims.....	2,508.14
Time checks, whether lienable or not, held by bank, Feb. 20, 1902, when mortgages were given.....	5,437.42
	$11,398.41

5. The amount asked by the fifth motion, $7,066.99 and interest, was made up:

445 Lumber note.....	$3,452.85
Log note proceeds.....	2,508.14
Non-lienable time checks held by bank March 29, 1902..	1,106.00
	$7,066.99

6. The amount asked by the sixth motion, $6,660.99 and interest, was made up:

Lumber note.....	$3,452.85
Log note.....	2,508.14
Non-lienable time checks held by bank Feb. 20, 1902..	700.00
	$6,660.99

The court denied each and every of the foregoing motions and ordered judgment for plaintiff for the sum of $6,254.99 with interest and cost. Judgment was entered accordingly from which this appeal was taken.

KERWIN, *J.*:

On defendant's appeal several errors are assigned which, so far as deemed necessary, will be considered in their order.

1. It is claimed that the court erred in overruling defendant's demurrer to plaintiff's complaint, because no demand was alleged, and further that the complaint does not sufficiently allege the necessity of bringing the action. Had the property covered by the chattel mortgages been in the possession of or under the control of defendant at the time action was brought by the trustee, so that it could have been surrendered upon demand, it would be neces-

sary to consider and decide this question. There is very respectable authority to the effect that no demand is necessary before action by a trustee to recover property transferred in fraud of the bankrupt act, upon the theory that the whole transaction resulting in a preference being unlawful no demand is necessary. Goldberg
et al. v. Harlan, 67 N. E. 707; Loveland on Bankruptcy,
446 609; Bull *v.* Houghton *et al.*, 65 Cal. 422, but in the case before us it appears from the allegations of the complaint that the mortgaged property had been converted before the commencement of the action, and the proceeds applied upon the mortgage indebtedness of the defendant. The defendant by such conversion put it out of its power to restore the property and under such circumstances no demand was necessary. Dunham *v.* Converse, 28 Wis. 306; Cramton *v.* Valido Marble Co., 1 L. R. A. 120; Shuman *v.* Fleckenstein, Fed. Cases No. 12,826.

Counsel for defendant further claims that the complaint is defective in not alleging that any creditor had filed a claim in the bankruptcy proceedings, or any fact showing that it was necessary to recover the alleged preference, and Mueller *v.* Bruss, 112 Wis. 406, is cited in support of this contention. It is sufficient answer to this proposition to say that such case deals only with the provision of the bankrupt act concerning the capacity of the trustee to avoid transfers of property in fraud of creditors which, in the absence of the bankruptcy proceedings, such creditors might themselves avoid. This action deals with an entirely different matter, under that part of the bankruptcy act relating to unlawful preferences, wherein it is provided that "if a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefitted thereby, or his agent, acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee and he may recover the property or its value from such person." Sub. b, sec. 60, Federal Act of 1898. No condition precedent to the right of the trustee to recover such property is found in the statute, as will be seen, and obviously courts cannot legitimately engraft any upon it.

2. Concerning the second assignment of error but little
447 need be said. The president of defendant was called for examination as an adverse party by plaintiff. Objection was made by plaintiff to defendant's right to cross-examine this witness as he was called by plaintiff for cross-examination as an adverse party, and the objection sustained. We fail to see how defendant was prejudiced by this ruling. It could have called and examined the witness, and he being president of the bank doubtless was not an unwilling or hostile witness. Therefore no reversible error was committed by the ruling.

3. Error is assigned upon the alleged ambiguity in and insufficiency of questions four and five of the special verdict, which deal with the subject as to whether the Waters-Clark Lumber Co. in acquiring title to the property in question acted for the bank with the understanding that a portion of the proceeds of such property

would be accounted for to defendant. Much that is said by counsel for plaintiff on this branch of the case is quite immaterial in view of the conclusion we have reached, that the legal wrong for which defendant is liable goes back to the time the chattel mortgages were executed, and goes no further than the interest in the logs and lumber which in the form of money finally came to its possession. The only direct interest, as appears from the uncontroverted evidence, was represented by the chattel mortgages, certain lien claims acquired by purchase, and a small amount additional that will be referred to specifically hereafter, and which was, as appears, substantially charged to it in the accounting by which the total interest in the property for which defendant was liable was arrived at. We can hardly agree with the treatment by the learned circuit judge in his opinion of the verdict as to the questions under discussion. He expressed the view that such questions and the answers thereto do not find that the lumber company acted as agent
448 for defendant in making the title to the lumber. We find in the learned judge's opinion: "It is not found that the lumber company was the agent of the defendant. If that were so then it would result that the defendant really received the property. The jury has found that the lumber company took title pursuant to an agreement between Young and the bank by which the lumber company was to account to the bank for a portion of the proceeds. The bank received the notes and not the logs and lumber." This part of the opinion of the learned circuit judge can hardly be reconciled with the language to which it refers, since it, in effect, sets the verdict aside as to the two questions and substitutes in place thereof, as a fact shown to exist by the undisputed evidence that the lumber company, without any other relation to the bank than an understanding with it that its interest in the logs and lumber should be recognized and satisfied out of the proceeds of such property, purchased the same. When the jury decided that the lumber company took title to the property, acting for the defendant and for its benefit they pretty clearly decided that the latter was a principal and the former a mere agent in the matter. However, the evidence seems to clearly establish that the lumber company purchased the property from Young in the regular course of business, without any understanding with the defendant other than that its interest in the property as mortgagee and claimant under numerous statutory labor liens should be recognized, and the equivalent thereof in money delivered to it out of the proceeds. It were better if the court had entirely omitted the two questions criticised, because the matters covered by them were not in controversy on the evidence, and to have framed one appropriate to the case and directed the proper answer, or left the matter to the jury, or found the facts independently. Having taken the answers and come to the conclusion indicated by that part of the opinion quoted, the better way cer-
449 tainly would have been to set the answers aside rather than to bend the questions into a form which would harmonize with the supposed truth of the matter. We may say in passing that the idea which the court voiced in the opinion that defendant did not

receive any logs or lumber but received notes, so far as it suggests that defendant did not receive the property, or any of it, for which the recovery was sought, is hardly consistent with the rendition of the judgment which followed, since the very purpose of the action was to recover the value of property, logs and lumber, not notes, wrongfully converted by defendant to its own use. If the reasoning of the learned court were sound the suggestion made by counsel for the defendant that the action was brought on one theory and went to judgment on another would not be wholly without merit. The fact is, as it seems, that the defendant did in legal effect receive into its possession and convert to its use the property in question to the extent of its chattel mortgage interest. The foregoing renders it unnecessary to discuss further questions four and five, or to consider complaints made as to instructions given in respect thereto.

4. Error is assigned on the instruction to the effect that all the creditors belonged to one class. Whether that is right or wrong does not seem to in any way concern the case. This action, as we have indicated, is simply one in trover to recover the value of property which, as is alleged, was in fraud of the bankrupt act wrongfully converted by defendant to its own use. Whether there was one or more classes of creditors, and in what manner the property sought to be recovered would, if the suit were successful, be administered, did not vary in the slightest degree, the legal rights of the plaintiff. If the property was obtained by the defendant in fraud of the bankrupt act, plaintiff was entitled to recover the same, and this is the only question involved.

5. Error is assigned because of the refusal to direct a ver-
450 dict for defendant, and in denying defendant's motion to correct the special verdict and for judgment in favor of defendant. A vigorous argument is made by counsel for defendant against the right of the trustee to maintain this action in the state court, relying mainly upon two Wisconsin cases, Brigham *v.* Claflin, 31 Wis. 607, and Bromley *v.* Goodrick, 40 Wis. 131. These cases were decided under the bankrupt act of 1867, which was quite different from law under which the present case was brought, and it appears that one of the reasons given for denying the right of the state court to take jurisdiction was that the federal courts had exclusive jurisdiction in such cases, and that conflicts of interest might arise. Under the bankrupt act of 1898 the Supreme Court of the United States in Bardes *v.* Hawarden Bank, 178 U. S. 524, held that the United States courts had no jurisdiction over suits similar to the one before us, unless by consent of the proposed defendant. And that in the absence of express prohibition the state courts lose none of their jurisdiction to litigate questions arising between the trustees in bankruptcy and any adverse claimant concerning transfers of property claimed to be made in fraud of the bankrupt act. That even jurisdiction conferred upon the United States courts does not divest the state courts of jurisdiction in such cases. Bardes *v.* Hawarden Bank, *supra*. Under the above decision at the time this action was commenced the United States courts had no jurisdiction of the action, and unless it could be brought in the state court the

plaintiff was without a remedy and the provisions of the bankrupt act practically nullified. It is, therefore, very clear that by the bankrupt act of 1898 the general jurisdiction of the state courts in independent actions between the trustee and adverse claimants was in no manner abridged, and this doctrine is recognized in subdivision *b* of section 23 of Bankrupt Act of 1893, which provides that "Suits by the trustee shall only be brought or prosecuted
451 in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant." This subdivision was amended in 1903 by adding "except suits for the recovery of property under section sixty, subdivision *b*, and section sixty-seven subdivision *e*." So when this suit was brought it could not be maintained in the federal court without the consent of the defendant. Bardes *v.* Hawarden Bank, *supra;* Perkins *v.* McCauley *et al.*, 98 Fed. 286. The bankrupt act of 1898 neither expressly, or by necessary implication, having excluded the state court or given exclusive jurisdiction to the federal courts in suits by trustees to recover property transferred in fraud of the bankrupt act, the ordinary jurisdiction of the state court under the constitution and laws continued to exist. French *v.* Smith & Sons Co., 84 N. W. 44; Chism *v.* Bank, 77 Miss. 599; Bardes *v.* Hawarden Bank, *supra.* And this doctrine is in harmony with the general theory in favor of concurrent jurisdiction under the constitution and laws. No reason exists why a contestant with a bankrupt in such case should lose any of his rights by the bankruptcy of his adversary, and for obvious reasons it might be preferable for him to litigate in the state courts. Hence the provision of subdivision *b*, section twenty-three, bankrupt act of 1898, to the effect that suits by a trustee shall only be brought in the courts where the bankrupt might have brought and prosecuted them if proceedings in bankruptcy had not been instituted, unless by the consent of the proposed defendant. Claflin *v.* Houseman, 93 U. S. 130. It is well settled that unless exclusive jurisdiction be given to the federal court, state courts have concurrent jurisdiction subject to review by the Supreme Court of the United States, except in cases where by the constitution itself the power is given exclusively to the federal courts, or prohibited to the
452 state courts. Martin *v.* Hunter, 1 Wheat. 304; Houston *v.* Moore, 5 Wheat. 26; Claflin *v.* Houseman, *supra.* It is clear, therefore, as a general proposition that at the time this action was commenced state courts had jurisdiction of such controversies. But it is claimed on the part of the defendant that the action cannot be maintained without overruling Brigham *v.* Claflin, 31 Wis. 607, and Bromley *v.* Goodrick, 40 Wis. 131. It will be observed, however, that these cases were decided under the bankrupt act of 1867, and it was held under this act that the federal and state courts had concurrent jurisdiction, and hence the bankruptcy statute was not nullified by refusal on the part of the state courts to take jurisdiction. Besides these Wisconsin decisions were put upon the ground that the action being penal and arising under the federal statute, pro-

viding a federal forum for redress, state courts should not interfere to enforce a penalty under a federal statute. And further that conflicts might arise between the state and federal courts, and this being so and the statute a penal one, and the United States courts having jurisdiction, grave consequences were anticipated in the assumption of jurisdiction by the state courts. In Brigham *v.* Claflin, *supra*, at page 613 this court says: "In the first place, it must be obvious that the assertion of a state jurisdiction in such causes will greatly tend to protract and multiply suits in respect to the bankrupt's estate, and will inevitably be a most fruitful source of conflict and collision between the state and federal tribunals. The object and policy of the bankrupt law manifestly are to collect and distribute the property of the bankrupt among his creditors as promptly as practicable; and these ends can be much more readily accomplished by the United States courts, which have plenary jurisdiction in these matters, than by tribunals acting by different modes, and deriving their powers from other sources." No such consequences could result from the bankrupt act of 1898.
453 On the contrary the contention of counsel for defendant would put the trustee in the anomalous position of being unable to administer his trust, because no court was open to him. The bankrupt act of 1898 clearly contemplates that suits similar to the one before us may be brought in state courts and cannot in the United States courts. This court has declined to follow the doctrine of Brigham *v.* Claflin, 31 Wis. 607, and has, in effect, held that actions like the instant case may be maintained in the state courts. Binder *v.* McDonald, 106 Wis. 332; Mueller *v.* Bruss, 112 Wis. 406. State courts, therefore, should take jurisdiction and the action was properly brought. Claflin *v.* Houseman, 93 U. S. 130; Mueller *v.* Bruss, *supra;* Bardes *v.* Hawarden Bank, 178 U. S. 524; Lyon *v.* Clark, 124 Mich. 100; French *v.* Smith & Sons Co., 84 N. W. 44; Perkins *v.* McCauley, 98 Fed. 286; Huntington *v.* Attrill, 146 U. S. 657; Whitman *v.* Oxford Nat. Bank, 176 U. S. 567; Chism *v.* Bank, 77 Miss. 599.

It is further claimed by counsel for defendant that the property for the value of which this suit was brought had never been sold or received by the defendant, and therefore the action cannot be maintained; that the defendant received notes, not property. It was established on the trial, without any room for reasonable controversy, that what the bank got was its mortgage interest obtained in fraud of the bankrupt act, and its interest by reason of certain lien claims, and a small amount in addition, as we have before indicated. The notes were but mere instruments by means of which its interest in the property was transferred to its possession in the form of money. To all intents and purposes it received the logs and lumber to the extent of its interest therein as effectually as any chattel mortgagee obtains his interest in the subject covered thereby, when a purchaser thereof subject to the mortgage, values the mortgage interest, and delivers it to the mortgagee in money. The act of carving out an interest in the property and transferring it by
454 means of the mortgage and the enforcement thereof in fraud of the bankrupt act, was, to all interests and purposes, a

wrongful conversion of the property to that extent. The complaint was in trover, which was proper under the circumstances. The difficulty at several points in this case is in the fact before mentioned that the mere instrument, by means of which an interest in the property was transferred to defendant, has been treated as the property defendant obtained.

It is further claimed by defendant that there is no evidence sufficient to support the finding that defendant had reasonable cause to believe that Young intended by the sale to enable the bank to obtain a greater percentage of its debt than other creditors of the same class would be able to obtain, and we are earnestly asked by counsel to carefully consider the evidence upon this subject. Quite a lengthy argument is made by counsel to the effect that the enforcement of the mortgage indebtedness would not enable defendant to obtain a greater percentage of its debt than any other creditor of the same class, hence there was no preference. There is abundance of evidence to the effect that Young was insolvent at the time of execution of the mortgages, and that the agents of defendant, when the mortgages were executed, had reasonable cause to believe that Young intended to give defendant a preference. It would serve no useful purpose to go into a lengthy discussion of the evidence upon this proposition. Young was hopelessly insolvent when the mortgages were executed, he in effect told the officers of the bank when requested to make the mortgages that he did not have sufficient property to pay all his creditors; he did all his banking business with defendant; he was not a man of large means, or large business interests; defendant had examined into his affairs and knew, or ought to have known, his financial condition. His indebtedness to the bank during a period of about two years prior to the
455 execution of the mortgages had increased from $2,000 to $27,000, while during the same time there is evidence to the effect that his assets decreased. The officers of the bank were urging payment for a year before the mortgages were given, claiming the loan was too large. It appears that a day or so after Young's mill burned an officer of the bank requested him to execute chattel mortgages, and presented them to him prepared; that he refused, saying it would not be fair to do that and leave all the rest of his creditors, as he did not have enough to pay all he owed, and the officer of defendant said he ought not to go back on the bank, that it had used him well, and he ought to give it a mortgage. At this time he refused to execute the mortgages, but did about a week later. Young testified that he intended to give defendant a preference. It is true he made statements to the bank showing his assets much larger than they really were, but in view of the large indebtedness to the bank and its familiarity with his business, together with the fact that he was meeting practically all his obligations with fresh promises to pay, and constantly increasing his indebtedness, the defendant must be charged with knowledge of his insolvency at the time of the execution of the mortgages. But it is useless to pursue the investigation. It is sufficient to say that we are convinced from a careful examination of the evidence that it supports the verdict, and upon

well established principles such finding cannot be disturbed. Whether defendant had reasonable cause to believe that Young was insolvent within the meaning of the bankrupt act was a question of fact, and it was chargeable with notice of such fact as reasonable inquiry in view of the circumstances with respect to the debtor's condition, which were brought home to it, might fairly be expected to disclose. So the facts and circumstances in this case were sufficient to warrant the jury in finding that the mortgages were
456 executed with intent of giving defendant a preference. *In re* Eggert, 102 Fed. 735; Hackney *v.* Raymond Bros. Clarke Co., 94 N. W. 822; Giddings *v.* Dodd *et al.*, Federal Cases No. 5405.

It is claimed, however, by counsel for defendant that unless the enforcement of the mortgages would operate to give defendant a greater percentage of its debt than other creditors of the same class would receive, that the mortgages did not amount to a conveyance of property, or in other words, a preference, within the meaning of the bankrupt act. We do not so understand the law. The Federal Statute renders void any preference given under the circumstances specified therein, and, as we have seen, gives the trustee in bankruptcy the right to recover any property, or its value, conveyed in violation of such act. Manifestly, if a creditor receives security for the payment of his claim and that is followed within four months by the commencement of proceedings in bankruptcy against or on the part of the debtor, the intention of such security being to give the favored creditor a preference, (the having knowledge or reasonable means of knowledge thereof), and yet have the same standing as other creditors for the balance of his claim, as he would have if the transaction were valid, the effect would necessarily be to give such creditor an undue advantage, a perference within the meaning of the bankrupt act. That is too clear to admit of reasonable controversy. Toof *et al. v.* Martin, 13 Wall. 40.

The further point is made that prior to the commencement of this action plaintiff ratified the sale by Young to the Waters-Clark Lumber Company, which by this action it is sought to avoid, in that July 7th, 1902, he began an action against such company on the theory that there was such a sale; that the property was of the value of $35,000, that the company agreed to pay certain liens on the property, and that after taking account thereof there was a balance due Young; that the action was grounded on implied contract
457 and precluded subsequent action sounding in tort to recover the subject of the sale. True, one cannot pursue inconsistent remedies to obtain redress for a single wrong. He cannot bring replevin or trover upon the theory that the property involved in his, and subsequently sue upon contract as if the title to the property had passed from him or beyond his reach. Fuller-Warren Co. *v.* Harter, 110 Wis. 80; Smeesters *v.* Schroeders, 101 N. W. 363; Rowell *v.* Smith, 102 N. W. 1. But we fail to see how this doctrine applies here. Counsel for defendant seems to have misconceived the character of the action commenced by plaintiff against the Waters-Clark Lumber Co. As we read the complaint, a copy of which is found in the record, the cause of action set forth therein is similar to the

one here. It is in trover to recover the value of property wrongfully converted. The lumber company is there charged with having, as agent for the defendant here, in fraud of the bankrupt law obtained possession of the property in question by purchasing the same of Young. This action charges the same thing. While before the effort was to recover the value of the property of a guilty agent, here the purpose was to recover the value of the property of the guilty principal. Both actions were commenced upon the theory that the property in question was in fraud of the bankrupt law converted by the lumber company and the defendant, the former acting as agent of the latter.

6. It is further assigned as error that the judgment is excessive. The court fixed the amount by taking the aggregate of the two notes and the $700 paid for non-lien time checks held by the bank, aggregating $6,660.99 and deducting therefrom $406, amount of non-lien time checks taken by defendant between February 20 and March 29, leaving the balance of $6,254.99, for which amount with interest and costs judgment was rendered. Counsel for defendant concedes that the $406 should not have been deducted, but contends that because there was included in one of the notes making up the aggregate of $6,660.99 $413, over payment on the purchase price of the logs by the Waters-Clark Lumber Company, that the difference between the $413 and $406 makes the judgment to that extent excessive in the sum of $7. But there is evidence that the amount of
458 this so-called over payment on purchase price was in fact only $377.05. It is quite clear from the record that the $406 should not have been deducted from the $700, amount of non-lien time checks held by defendant February 20, 1902, but should have been deducted from $1106, the amount of non-lien time checks held by defendant March 29, 1902. The amount of the over payment on purchase price of logs, however, should have been deducted, and hence the errors do not substantially affect the judgment. It is claimed by counsel for plaintiff that even though the lumber company paid $413, or any amount more than the purchase price of the logs, by mistake or otherwise, and that the amount was included in the judgment, it cannot be considered. This position is not tenable. If an amount was included in the judgment, which should not have been, sufficient substantially to offset the $406, which was improperly deducted from the judgment, substantial justice was done between the parties in that regard and the judgment should not be disturbed. The trustee acting for the creditors was not entitled to judgment for any amount paid my mistake by the lumber company to Young and turned over by Young to the defendant. It was no part of Young's assets, and therefore did not become any part of the trust property.

Some other points presented in the brief of counsel for defendant do not strike us as being sufficiently significant to warrant consideration in this opinion, though it should be said that all points presented by counsel have, as it is believed, been fully considered by the court. The amount of the judgment, as we view the matter, is substantially the equivalent of the property which defendant secured

by its mortgages. That is all the property, as appears from the record, which it obtained in fraud of the bankrupt act.

Motions for judgment on the verdict were made in plain-
459 tiff's behalf, the amounts claimed ranging from upwards of $24,000 down to $6,660.99. On his appeal he complains of the denials of such motions and seeks to obtain an increase in the judgment awarded. What has been said seems to effectually dispose of all questions presented in that regard. The money paid to defendant on the lien claims was for actual interests in the property, paramount to the rights of the plaintiff. We use the term lien claims in preference to the term "lienable claims." Under our statute, as construed by this court, such claims are actual interests in the property to which they relate, subject to be defeated by failure to perform certain conditions subsequent, made by statute necessary to the preservation and enforcement of the lien. The term "lienable claim" suggests a mere right to obtain an interest in specific property instead of an interest *in presenti* therein. The latter is the character of a laborer's lien on logs and lumber under our statute. His interest in the property he acquired by performance of the labor. Smith *v.* Shell Lake Lumber Co., 68 Wis. 89; Viles *v.* Green, 91 Wis. 217. Manifestly, a mere realization in money by defendant of its interest in property, which was perfectly valid, was not a violation of the bankrupt act as to unlawful preferences. The only interest, as we have seen, in the property in question which was acquired by the defendant in violation of such act was the mortgage interest, and that interest in money value was embodied in the judgment.

By the COURT: The judgment is affirmed on both appeals.

460 And afterwards, to-wit: on the sixteenth day of July, A. D. 1905 the said defendant filed its motion for a re-hearing in this cause, in the words and figures following, that is to say:

State of Wisconsin, in Supreme Court, January Term, 1905.

No. 28.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,

vs.

EAU CLAIRE NATIONAL BANK, Defendant.

Now comes the above named defendant and moves the court for a re-hearing of the above entitled cause on the defendant's appeal.

Dated July 17th, 1905.

WICKHAM & FARR,
Attorneys for Defendant as Appellant.

(Endorsements:) State of Wisconsin, In Supreme Court. January Term, 1905. No. 28. Ralph W. Jackman, trustee *v.* Eau Claire National Bank. Motion for re-hearing. Filed July 16, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

461 And afterwards, to-wit: on the nineteenth day of July, A. D. 1905 the said defendant filed its notice of motion for re-hearing in this cause, in the words and figures, that is to say:

State of Wisconsin, in Supreme Court, January Term, 1905.

No. 28.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

To Bundy & Wilcox, Attorneys for the Plaintiff:

You are hereby notified that the defendant in the above entitled cause has filed a motion for a rehearing therein, on the defendant's appeal; that the defendant's arguments in support of said motion are herewith served upon you, and that said arguments will be filed and submitted on the 28th day of July, 1905.

Dated July 18th, 1905.

Yours &c.,

WICKHAM & FARR,
Attorneys for Defendant as Appellant.

(Endorsements:) State of Wisconsin, Supreme Court. Ralph W. Jackman *v.* Eau Claire National Bank. Notice of Motion for Re-hearing on Defendant's Appeal. Due service of this notice admitted July 18, 1905. Bundy & Wilcox, Plaintiff's Attorneys. Filed July 19, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis.

462 And afterwards, to-wit: on the twenty-second day of July, A. D. 1905, the said plaintiff filed his motion for a re-hearing in this cause, in the words and figures following, that is to say:

STATE OF WISCONSIN:

In Supreme Court, January Term, 1905.

Number 28.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

Now comes the plaintiff as appellant and moves the court for a re-hearing on the appeal of the plaintiff herein.

Dated July 22, 1905.

BUNDY & WILCOX,
Attorneys for Plaintiff as Appellant.

(Endorsements:) State of Wisconsin, In Supreme Court. Ralph W. Jackman, trustee etc., Plaintiff *v.* Eau Claire National Bank,

Defendant. Motion for Re-hearing. Filed July 22, 1905. Clarence Kellogg, Clerk of Supreme Court, Wis. Bundy & Wilcox, Eau Claire, Wis., Attorneys for Plaintiff as Appellant.

463 And afterwards, to-wit: on the first day of August, A. D. 1905, the said plaintiff filed his notice of motion for rehearing in this cause, in the words and figures following, that is to say:

STATE OF WISCONSIN:

In Supreme Court, January Term, 1905.

No. 28.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Plaintiff,
vs.
EAU CLAIRE NATIONAL BANK, Defendant.

To Wickham & Farr, Attorneys for the Defendant:

You are hereby notified that the plaintiff in the above entitled cause has filed a motion for a rehearing therein, on the plaintiff's appeal; that the plaintiff's arguments in support of said motion are herewith served upon you, and that said arguments will be filed and submitted on the 11th day of August, 1905.

Dated July 31st, 1905.

Yours &c., BUNDY & WILCOX,
Attorneys for Plaintiff as Appellant.

(Endorsements:) In Supreme Court, State of Wisconsin. R. W. Jackman, trustee, Plaintiff, *v.* Eau Claire National Bank, Defendant. Notice of Motion for Re-hearing on Plaintiff's Appeal. Service of the within notice is hereby admitted this 31st day of July, 1905. Wickham & Farr, Att'ys for Defendant.

464 And afterwards, to-wit: on the third day of October, A. D. 1905, the same being the sixth day of the August term, judgment was rendered on said motions for re-hearing, by this court, in the words and figures following, that is to say:

Eau Claire Circuit Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Appellant,
vs.
EAU CLAIRE NATIONAL BANK, Respondent.

The court being now fully advised of and concerning the motion of the said appellant for a rehearing herein, it is now here ordered and adjudged by this court, that said motion be and the same is hereby denied, with twenty five dollars costs and costs of motion.

Eau Claire Circuit Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Appellant.

The court being now fully advised of and concerning the motion of the said appellant for a rehearing herein, it is now here ordered and adjudged by this court, that said motion be and the same is hereby denied, with twenty five dollars costs and costs of motion.

465 EAU CLAIRE NATIONAL BANK, Plaintiff in Error,
vs.
RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Defendant in Error.

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office, with all things concerning the same in the above entitled cause.

That the original writ of error, the petition therefor, the order allowing said writ, the citation with the affidavit of service attached thereto, a copy of the bond, the prayer for reversal, and the assignment of errors, are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Madison, this 28th day of November, A. D. 1905.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

466 In Supreme Court, State of Wisconsin.

RALPH W. JACKMAN, as Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

The above named defendant Eau Claire National Bank, having filed in this court its petition for a writ of error to the supreme court of the United States for the correction of the errors by defendant complained of in the rendition of the judgment against it in said cause, and having filed with said petition an assignment of errors under Section 997 of the Revised Statutes of the United States, and said writ of error having been allowed and having been issued, and

a transcript of said record, including said assignment of errors so filed, having been returned to said United States Supreme Court,

It is hereby certified that on the hearing of said cause before this court on the appeal of the defendant Eau Claire National Bank, there was drawn in question the construction of the provisions of the Federal Bankrupt Act relating to the subject of preferences; that on said hearing said defendant specially set up and claimed as a right and immunity under the Bankrupt Act among others, the following propositions:

First. That the plaintiff was trustee for the creditors of the bankrupt, and by the provisions of the Bankrupt Act the plaintiff could not recover from defendant a voidable preference except for the benefit of such creditors.

Second. That in said case the recovery should be limited to
467 such sum as the evidence in this case proved was necessary to pay in full, with interest and costs, the claims of all other creditors of the bankrupt whose claims were provable under the Bankrupt Act and allowed in the bankruptcy proceeding.

Third. That no recovery could be had for the purpose of paying claims of alleged creditors who were not proven by the evidence in this case to be creditors of the bankrupt, even though such claims may have been filed and allowed in the bankruptcy proceeding.

Fourth. That no recovery could be had for the purpose of paying the claim of any creditor who had received and failed to surrender a preference on his claim, although the claim of such creditor had been filed and allowed in the bankruptcy proceeding in violation of the Bankrupt Act.

It is further certified that on said hearing, said questions were considered by this court and were by it decided adversely to the said defendant, Eau Claire National Bank.

Witness the Honorable John B. Cassoday, Chief Justice of the Supreme Court of the State of Wisconsin, this 7th day of March, A. D. 1906.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of Wisconsin.

468 & 469 State of Wisconsin, in Supreme Court.

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt, Plaintiff and Respondent,
vs.
EAU CLAIRE NATIONAL BANK, Defendant and Appellant.

STATE OF WISCONSIN, *Supreme Court, ss:*

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that on the 7th day of March, 1906, a certificate of said court signed by Hon. John B. Cassoday, Chief Justice thereof, was signed, certifying to the questions and facts therein stated, in the above entitled cause; that said certificate is hereto annexed and that said certificate is hereby sent and trans-

mitted to the supreme court of the United States pursuant to the writ of error heretofore issued in said cause, in which the said Eau Claire National Bank is plaintiff in error, and the said Ralph W. Jackman, as trustee of the estate of John H. Young, a bankrupt, is defendant in error, which writ of error was issued to review in said United States Supreme Court the final judgment rendered in said cause in the supreme court of the State of Wisconsin, to which writ return has heretofore been made, and which said certificate is hereby sent and transmitted as an additional and supplemental return to said writ.

In testimony whereof, I have caused the seal of said court to be hereto affixed at the city of Madison, Wisconsin, this 12th day of March, in the year of our Lord, one thousand nine hundred and six.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of Supreme Court of the State of Wisconsin.

470 [Endorsed:] United States Supreme Court Eau Claire National Bank, Plaintiff in Error *vs.* Ralph W. Jackman, as Trustee of the Estate of John H. Young, a Bankrupt, Defendant in error. Certificate of Chief Justice of Wisconsin Supreme Court and Supplemental Return Office of the Clerk Supreme Court U. S. Received Mar. 14 1906. 511 20013 Mar. 14/06

471 [Endorsed:] File No. 20013. Supreme Court U. S. October Term, 1905. Term No. 511. Eau Claire National Bank, Pl'ff in Error, *vs.* Ralph W. Jackman as Trustee &c. Certificate of Chief Justice of Supreme Court of Wisconsin. Filed May 14", 1906.

472 United States Supreme Court, October Term, 1905.

No. 511.

EAU CLAIRE NATIONAL BANK, Plaintiff in Error,
vs.
RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Defendant in Error.

In Error to the Supreme Court of the State of Wisconsin.

Now comes the Eau Claire National Bank, plaintiff in error, and makes and files the following statement of the errors on which it intends to rely, and the parts of the record which it thinks necessary for the consideration thereof under and pursuant to the provisions of paragraph 9 of Rule 10 of said court.

The following is a statement of the errors on which said plaintiff in error intends to rely.

First. That the supreme court of the State of Wisconsin erred in determining that the complaint of the defendant in error (the plaintiff in the state court) stated a cause of action and in refusing to re-

verse the judgment rendered in favor of the defendant in error (the plaintiff in the state court) in the circuit court of Eau Claire County, for the failure of said complaint to state facts sufficient to constitute a cause of action.

Second. That said supreme court of the state of Wisconsin erred in determining that the defendant Eau Claire National Bank (plaintiff in error herein) was liable in said action for the value of the logs and lumber described in the plaintiff's complaint to the ex-
473 tent of the chattel mortgage interest of the defendant (plaintiff in error) therein.

Third. That said court erred in determining that the defendant (plaintiff in error) was liable in said action for having received as a preference, contrary to the provisions of Section 60*a* and Section 60*b* of the Bankrupt Act of July 1, 1898, as a portion of its chattel mortgage interest in said logs, the sum of $1335.62 as the proceeds of the sale of the portion of said logs known as the "Up River logs," on which logs said defendant (plaintiff in error) never held any chattel mortgage and which logs were never transferred to said defendant (plaintiff in error).

Fourth. That said court erred in determining that the defendant (plaintiff in error) was liable in said action for the value of those certain notes and moneys it had received for which the judgment in said action was rendered against it, as a preference, under the provisions of said Bankrupt Act, although the plaintiff trustee (defendant in error) had not elected to avoid such preference by bringing suit to recover the same, and had not elected to avoid such preference in any manner whatever.

Fifth. That said court erred in determining that in order to ascertain whether or not the defendant (plaintiff in error) was liable for having received a preference under the provisions of the Bankrupt Act, it was immaterial whether or not the defendant (plaintiff in error) and the other creditors of the bankrupt were creditors of the same class, and said court erred in refusing to reverse said judgment because of the error of said circuit court in charging the jury that all the creditors of said bankrupt were creditors of the same class. The said charge on said subject being as follows: "So far as creditors' rights are involved in this action they are all of the same class, by which is meant that they would all receive the same percentage of their claims. Claims for taxes or wages within certain times
474 so as to be preferred, would be of a different class, but claims of creditors like those proven in the Young bankruptcy proceedings are all of the same class."

Sixth. That said court erred in determining that the defendant (plaintiff in error) had reasonable cause to believe that a preference was intended erred in the construction of said Bankrupt Act in the following respects:

(*a.*) In determining that where the effect of the enforcement of a transfer from an insolvent debtor is to enable any of his creditors to obtain any portion of his debt, and that transfer is followed within four months by the commencement of bankruptcy proceedings, that such a transfer would necessarily enable such creditor to obtain a

greater percentage of his debt than other creditors of the same class and would constitute a preference within the meaning of said Bankrupt Act;

(*b.*) In determining that although the effect of the enforcement of the transfer in question did not operate to give the defendant (plaintiff in error) a greater percentage of its debt than other creditors of the same class, that never-the-less such transfer constituted a preference within the meaning of said Bankrupt Act;

(*c.*) In determining by such rules of construction of said Bankrupt Act that the evidence was sufficient to sustain the finding that the defendant (plaintiff in error) had reasonable cause to believe that a preference was intended, whereas under a proper construction of said Bankrupt Act it appears by the uncontroverted evidence that said defendant (plaintiff in error) did not have reasonable cause to believe that a preference was intended.

Seventh. That said court erred in determining that the defendant (plaintiff in error) having received a preference which was voidable by the trustee, was for that reason liable in said action for the
475 full value of such preference so received in an amount in excess of what was necessary to pay all the other creditors of said bankrupt.

Eighth. That said court erred in determining that the defendant (plaintiff in error) was liable to the plaintiff trustee (defendant in error) for moneys required by said trustee to pay claims of fictitious creditors whose claims were not proven by the evidence and claims of creditors who had themselves received preferences and in giving judgment against defendant therefor.

Ninth. That said court erred in refusing to limit the recovery against the defendant (plaintiff in error) to such sum as should be sufficient after the payment of expenses and costs, to pay all the other creditors of the bankrupt whose claims were provable and proven and entitled to be allowed under the provisions of the Bankrupt Act.

Tenth. That said court erred in affirming the judgment rendered against the defendant (plaintiff in error) in said action, and in refusing to reverse said judgment.

Eleventh. That said court erred in refusing to determine that the defendant (plaintiff in error) was entitled to judgment and in refusing to direct judgment to be entered in its favor.

The following are the parts of the record which said plaintiff in error thinks necessary for the consideration on the errors which it intends to rely on, to wit:

The entire record in said cause excepting the following portions thereof. (The pages refer to the pages of the transcript.)

First. Notice and undertaking on defendant's appeal to the supreme court of Wisconsin (Pages 17*a* to 19*a* of transcript).

Second. Notice and undertaking on appeal of the plaintiff to the Wisconsin supreme court (Pages 20*a* to 22*a* inclusive of the transcript).

Third. Summons (Page 1).

476 Fourth. Verification to the complaint (page 7).

Fifth. The affidavit of service of the summons and complaint (Page 10).

Sixth. Verification to the answer (page 13).

Seventh. Order for judgment (Pages 19-20).

Eighth. Pages 24*a* to 24*f* inclusive, consisting of substitution of case on calendar, order for substitution, stipulation to continue to August term, order for same, stipulation to continue to January term and order for same.

Ninth. That part of the testimony of C. T. Bundy after the words "cross examination" on page 165 to and including the words "if we didn't we wanted the value" near the top of page 169.

Tenth. Exhibit B-1 on page 176 beginning with the words "Exhibit B-1 offered and received in evidence" and ending with the figures "$1672.05."

Eleventh. That part of the evidence of John H. Young beginning with the words "I did say in my direct evidence yesterday morning that I borrowed $2000 of the Eau Claire National Bank after going to Cadott" on page 178 to and including the words "A. Well some of the logs were hauled close around the mill. We went by the mill with most of the logs that was hauled out" on page 187.

Twelfth. That portion of Exhibit D-1 beginning with proof of claim of the Eau Claire Grocer- Company on page 273 to and including the proof of claim of Alex Lintz on page 283.

Thirteenth. That portion of the testimony of W. K. Coffin beginning on page 294 and ending at page 297.

Fourteenth. Testimony of E. M. Fish beginning on page 344 and ending on page 345.

Fifteenth. That portion of the record beginning with the words "it is admitted that the summons and complaint in this
477 action were served on July 2, 1902, by Arthur M. Bundy" on page 360 to and including the words "witness excused" just before the words "testimony closed" on page 372.

Sixteenth. That portion of the testimony of C. T. Bundy beginning with the words "C. T. Bundy recalled for plaintiff testified as follows" on page 372, to and including the words "witness excused" on page 374.

Seventeenth. The portion of the transcript beginning with the words "Mr. Wickham I further object to the submission of the question on the ground that it may mean one thing or it may mean another" near the beginning of page 377, to and including the words "the Court. Well the court thinks that its intention ought to appear in the form of the question and appear by its instructions to the jury which the court has not yet prepared" on page 378.

Eighteenth. That portion of defendant's requests to charge the jury beginning with Request No. 2 on page 379, to and including Request No. 8 on page 381.

Nineteenth. That portion of the transcript after the words "read as follows" beginning with the copy of defendant's Exhibit No. 1 on page 410, to and including Exhibit No. 8 which ends with the

words "yours respectfully, John H. Young" at the bottom of page 421.

Twentieth. Plaintiff's motion for rehearing page 462; notice of same (page 463).

All of which portions of the transcript, designated by numbers 1 to 20 inclusive, the plaintiff in error thinks are not necessary for the consideration of the errors on which it intends to rely.

Dated, February 28, 1906.

BURR W. JONES,
JAMES WICKHAM, AND
FRANK R. FARR,
Counsel for Plaintiff in Error.

Due service of a copy of the foregoing statement is hereby admitted this 28th day of February, 1906.

W. P. BARTLETT,
C. T. BUNDY, AND
R. P. WILCOX,
Counsel for Defendant in Error.

478 [Endorsed:] 511 20013 United States Supreme Court. Eau Claire National Bank, Plaintiff in Error, *vs.* Ralph W. Jackman, Trustee, etc., Defendant in Error. Statement filed Under Rule 10 by Plaintiff in Error. Office of the Clerk Supreme Court U. S. Received Mar. 3-1906. 511 20013 Mar. 3, '06.

479 [Endorsed:] File No. 20,013. Supreme Court U. S. October Term, 1905. Term No. 511. Eau Claire National Bank P. E. *vs.* Ralph W. Jackman as Trustee &c. Statement of Errors relied upon & designation by plff. in Error of parts of record necessary to be printed. Filed March 3d, 1906.

480 United States Supreme Court, October Term, 1905.

No. 511.

EAU CLAIRE NATIONAL BANK Plaintiff in Error,
vs.
RALPH W. JACKMAN, Trustee of the Estate of John H. Young, Bankrupt, Defendant in Error.

In Error to the Supreme Court of the State of Wisconsin.

Now comes Ralph W. Jackman, trustee of the estate of John H. Young, bankrupt, defendant in error, and makes and files the following statement of the parts of the record which he thinks material and necessary for the consideration of the errors relied on by the plaintiff in error, to wit:

The entire record in said cause excepting the following portions thereof. (The pages refer to the pages of the transcript.)

(1.) Notice and undertaking on defendant's appeal to the supreme court of Wisconsin (Pages 17*a* to 19*a* of transcript).

(2.) Notice and undertaking on appeal of the plaintiff to the Wisconsin Supreme court (Pages 20*a* to 22*a* inclusive of transcript).

(3.) Summons (Page 1).

(4.) Verification of the complaint (Page 7).

(5.) The affidavit of service of summons and complaint (Page 10).

(6.) Verification to the answer (Page 13).

(7.) Order for judgment (Pages 19-20).

(8.) Pages 24*a* to 24*f* inclusive, consisting of substitution of case on calendar, order for substitution, stipulation to continue to August term, order for same, stipulation to continue to January term and order for same.

481 All of which portions of the transcript designated by numbers 1 to 8 inclusive the defendant in error thinks are not necessary or material for the consideration of the errors relied on by the plaintiff in error.

Dated March 17 1906.

W. P. BARTLETT,
C. T. BUNDY, &
R. P. WILCOX,
Counsel for Defendant in Error.

Due service of a copy of the foregoing statement is admitted this 17 day of March 1906.

WICKHAM & FARR AND
BURR W. JONES,
Counsel for Plaintiff in Error.

482 [Endorsed:] 511 20013 No. —. United States Supreme Court. October Term. No. 511. Eau Claire National Bank against Ralph W. Jackman Trustee of Estate of John H. Young Bankrupt. Office of the Clerk Supreme Court of U. S. Received Mar. 20 1906. W. P. Bartlett C. T. Bundy R. P. Wilcox, Attorneys for Defendant in Error. Eau Claire, Wis. 511 20013 Mar. 20, '06

483 [Endorsed:] File No. 20,013. Supreme Court U. S. October Term, 1905. Term No. 511. Eau Claire National Bank, P. E. *vs.* Ralph W. Jackman Trustee. Designation by Defendant in Error under section 9, rule 10. Filed Mar. 20", 1906.

Endorsed on cover: File No. 20,013. Wisconsin Supreme Court. Term No. 163. Eau Claire National Bank, plaintiff in error, *vs.* Ralph W. Jackman, as trustee of the estate of John H. Young, a bankrupt. Filed December 8th, 1905. File No. 20,013.

FILE COPY.

Office Supreme Court U. S.
FILED
FEB 26 1906
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1905.

NO. 163

EAU CLAIRE NATIONAL BANK,
PLAINTIFF IN ERROR.

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, BANKRUPT,
DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Wisconsin.

Brief of Plaintiff in Error on Motion of Defendant in Error to Dismiss Writ.

BURR W. JONES,
JAMES WICKHAM,
FRANK R. FARR,
Counsel for Plaintiff in Error.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1905.

NO. 511.

EAU CLAIRE NATIONAL BANK,

PLAINTIFF IN ERROR.

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, BANKRUPT,

DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Wisconsin.

Brief of Plaintiff in Error on Motion of Defendant in Error to Dismiss Writ.

STATEMENT OF THE CASE.

The defendant in error, as trustee of the estate of John H. Young, a bankrupt, brought suit in the circuit court of Eau Claire County, Wisconsin, against the plaintiff in error to recover $35,000.00, the alleged value of certain logs and lumber that had been owned by Young, the bankrupt, which property it was alleged the Bank received as a preference when Young was insolvent, within four months prior to the adjudication in bankruptcy and contrary to the provisions of the bankrupt law. The Bank demurred to the trustee's complaint, on the ground, among others, that it did not state facts sufficient to constitute a cause of action. The trial court over-ruled the demurrer. The Bank then answered, admitting the adjudication in bankruptcy and the appointment of the trustee. It alleged that Young had executed and delivered to the Bank certain chattel mortgages on a portion of the logs and lumber in

question, that the logs and lumber were sold by Young in March, 1902, to the Waters Clark Lumber Company, including certain logs not covered by the Bank's mortgage and that a portion of the proceeds of this sale was paid to the Bank to discharge certain liens it held against the property. The answer also alleged that the mortgages were given in good faith and for a valuable consideration and "that neither of said mortgages, nor the payments made to the defendant as aforesaid, were made, given or received for the purpose of giving the defendant a preference over other creditors of said Young, contrary to the provisions of the bankruptcy law." The trustee based his right to recover on the provisions of the bankruptcy act. The Bank defends, basing its right to hold what it received, and its immunity from liability, on the provisions of the Bankruptcy Act. The Bank specially claimed in its answer that the mortgages and payments it received, were not given or received in violation of the provisions of this Federal statute. (Record 12-13).

The case was tried before the court and a jury. A special verdict was rendered covering some of the issues in the case (Record 15). Some questions of value were decided by the court, but most of the questions in the case were determined by the undisputed evidence upon which no findings were made, either by the court of jury. Judgment was entered in the trial court on September 18, 1903, in favor of the trustee for $6,254.99, with interests and costs, amounting in all to $6,873.77. Both parties appealed from this judgment to the supreme court of the state of Wisconsin, where the judgment was affirmed on both appeals on June 23, 1905. To reverse which judgment the Bank sued out this writ or error.

The jury decided in substance that at the time the bankrupt gave the mortgages to the Bank and at the time he sold the logs and lumber to the Waters Clark Lumber Company, that he was insolvent, that Young intended to give a preference, and that the Bank had reasonable cause to believe that a preference was intended (Record 15 to 17). The court found that the lumber which was included in the Bank's mortgage and sold to the Waters Clark Lumber Company was worth $3,452.85, and that a note for that sum and value was given by the Waters Clark Lumber Company to Young and by Young transfered to the Bank; that the Cadott logs included in the Bank's mortgage and sold by the bankrupt to the Waters Clark Lumber Com-

pany was worth $10,077.84; that the Up River logs sold by Young to the Waters Clark Lumber Company, and which were not included in the Bank's mortgage, were worth $11,055.84, and that a note which the evidence shows was given as the net proceeds of the sale of both quantities of logs over and above certain labor liens, (the note having been given by the Waters Clark Lumber Company to Young and by him transferred to the Bank) was worth $2,508.14 (Record 20).

The allegations of the complaint to the effect that in the sale of the logs and lumber the Waters Clark Lumber Company acted as trustee or agent of the Bank, are not sustained by any evidence, but on the contrary, the evidence shows that these allegations were not true. Findings 3 and 4 of the special verdict are ambiguous on this subject, but both the trial court (Record 398) and the state supreme court held that there was no evidence to sustain these allegations. The state supreme court in its opinion assumed that the Up River logs were included in the Bank's mortgage. In this the court was mistaken. There is no evidence to sustain such an assumption. There is no claim that the evidence sustains such an assumption. The evidence is all the other way (Record 63, 64, 40, 84, 310, 388). There is included in the judgment against the Bank $1,335.62, proceeds of the sale of the Up River logs (Record 38, 30, 374, 94, 95). At the time of the transfers in question, the Bank held notes against Young on which there was due with interest and including $700.00 on non-lienable time checks, $23,648.52 (Record 104, 206, 423, 430). Of this amount the Bank collected by virtue of the transfers alleged to constitute a preference $6,254.99, for which judgment was rendered against it, or about 26½ per cent of the Bank's claim. All other unsecured debts that Young was then owing, and for which claims were afterwards filed in the bankruptcy court, amounted to $7,948.81 (Record 98, 99, 143 to 147).

There is some conflict in the evidence as to what debts of Young the bank had notice of at the time of these transfers, but giving the trustee the benefit of all evidence in his favor on this question, the sum total of the claims of all other creditors that the Bank had notice of at this time, which could in any manner be affected by the alleged preference, or by any bankrupt proceedings was $7,406.90. According to the undisputed evidence, the Bank then had information which its officers believed, and were justified in believing, that Young had property available for the payment of the claims of other

creditors in at least the sum of $14,680.00. If Young then had property to the amount of $1,962.82 it would have been sufficient to pay other creditors of which the Bank had notice, 26½ per cent of this $7,406.90, or a percentage equal to that collected by the Bank.

Young's principal creditor aside from the Bank was Sallie F. Moon, whose claim was filed and allowed in the bankrupt court at $5,360.14 (Record 263). The claim of W. S. Monroe was filed and allowed in the bankruptcy court at $25.00 (Record 56). Both Sallie F. Moon and W. S. Monroe received unlawful preference from the bankrupt within four months prior to the adjudication. The amount paid to Sallie F. Moon on April 24, 1902, was $1,059.86 (Record 264. 153). The amount paid to Mr. Monroe was $1,672.05 (Record 175 to 177). If the claims of Sallie F. Moon and W. S. Monroe were deducted from the total amount of the debts of the bankrupt which he was owing at the time of the transfer in question, (these claims not being provable under the bankrupt law), the sum total of all other debts which could be affected by the alleged preference, is $2,523.67.

If the trustee represents the creditors, and if the recovery should be limited to the amount necessary to pay other creditors in full who have provable claims, then any judgment in excess of $2,523.67, with interests and costs, is excessive.

At the time of the transfers in question, Young was owing debts to the amount of several thousand dollars to workmen and servants for wages earned within three months prior to that time, which claims were entitled to priority under the bankrupt act. Besides, these claims were under the Wisconsin Statutes liens upon the logs and lumber. Time checks for a portion of these claims were held by the Bank. The trial court charged the jury on the question of whether or not a preference has been given, that the creditors were all creditors of the same class (Record 384). Due exception was taken to this charge (Record 390, 391). The state supreme court held that there was no error in this charge, for the reason that it was immaterial to the Bank whether or not creditors were creditors of the same class.

The plaintiff in error filed with its application for the writ of error under Section 997 of the United States Statutes an assignment of errors as follows:

(Title)

ASSIGNMENT OF ERRORS.

Now comes the defendant, the Eau Claire National Bank, in the above entitled action and in connection with its petition for a writ of error makes the following assignment of errors and avers that in the record and proceedings in said action and in the judgment therein, there is manifest error to the great damage of the defendant in this, to wit:

First. That the supreme court of the state of Wisconsin erred in determining that the plaintiff's complaint therein stated a cause of action, and in refusing to reverse the judgment rendered in plaintiff's favor in the circuit court of Eau Claire County, Wisconsin, for the failure of said complaint to state facts sufficient to constitute a cause of action.

Second. That said supreme court of the State of Wisconsin erred in determining that the defendant, Eau Claire National Bank, was liable in said action for the value of the logs and lumber described in the plaintiff's complaint to the extent of the chattel mortgage interest of the defendant therein.

Third. That said court erred in determining that the defendant was liable in said action for having received as a preference, contrary to the provisions of Section 60a and Section 60b of the Bankrupt Act of July 1, 1898, as a portion of its chattel mortgage interest in said logs, the sum of $1,335.62 as the proceeds of the sale of the portion of said logs known as the "Up River logs," on which logs said defendant never held any chattel mortgage and which logs were never transferred to said defendant.

Fourth. That said court erred in determining that the defendant was liable in said action for the value of those certain notes and moneys it had received for which the judgment in said action was rendered against it, as a preference, under the provisions of said Bankrupt Act, although the plaintiff trustee had not elected to avoid such preference by bringing suit to recover the same and had not elected to avoid such preference in any manner whatever.

Fifth. That said court erred in determining that in order to ascertain whether or not the defendant was liable for having received a preference under the provisions of said Bankrupt Act, it was immaterial whether or not the defendant and the other creditors of the bankrupt were creditors of the same

class, and said court erred in refusing to reverse said judgment because of the error of said circuit court in charging the jury that all the creditors of said bankrupt were creditors of the same class.

Sixth. That said court in determining that the defendant had reasonable cause to believe that a preference was intended erred in the construction of said Bankrupt Act in the following respects:

(a) In determining that where the effect of the enforcement of a transfer from an insolvent debtor is to enable any of his creditors to obtain any portion of his debt, and that transfer is followed within four months by the commencement of bankruptcy proceedings, that such a transfer would necessarily enable such creditor to obtain a greater percentage of his debt than other creditors of the same class and would constitute a preference within the meaning of said Bankrupt Act;

(b) In determining that although the effect of the enforcement of the transfer in question did not operate to give the defendant a greater percentage of its debt than other creditors of the same class, that never-the-less such transfer constituted a preference within the meaning of said Bankrupt Act;

(c) In determining by such rules of construction of said Bankrupt Act that the evidence was sufficient to sustain the finding that the defendant had reasonable cause to believe that a preference was intended, whereas under a proper construction of said Bankrupt Act it appears by the uncontroverted evidence that said defendant did not have reasonable cause to believe that a preference was intended.

Seventh. That said court erred in determining that the defendant having received a preference which was voidable by the trustee, was for that reason liable in said action for the full value of such preference so received in an amount in excess of what was necessary to pay all the other creditors of said bankrupt.

Eighth. That said court erred in determining that the defendant was liable to the plaintiff trustee for moneys required by said trustee to pay claims of fictitious creditors whose claims were not proven by the evidence and claims of creditors who had themselves received preferences and in giving judgment against defendant therefor.

Ninth. That said court erred in refusing to limit the recovery against the defendant to such sum as should be sufficient after the payment of expenses and costs, to pay all the other

creditors of the bankrupt whose claims were provable and proven and entitled to be allowed under the provisions of the Bankrupt Act.

Tenth. That said court erred in affirming the judgment rendered against the defendant in said action, and in refusing to reverse said judgment.

Eleventh. That said court erred in refusing to determine that the defendant was entitled to judgment and in refusing to direct judgment to be entered in its favor."

Substantially all the questions involved on the Bank's appeal to the state supreme court were Federal questions involving the construction of the Bankrupt Act, and involving the right and immunity of the Bank thereunder. These questions were all fully argued in the briefs filed on the Bank's behalf in the State Supreme Court, both in the original briefs and in the briefs filed in support of the motion for a rehearing. These questions were passed upon in the opinion of the state supreme court and were all decided adversely to the Bank, the plaintiff in error. Most of the questions are directly mentioned in the opinion.

The question of the right of the trustee to recover more than the amount sufficient to pay the claims of other creditors in full and the question of the right of the trustee to recover for claims of creditors who had themselves received preferences and whose claims were filed and allowed in the bankruptcy court contrary to the provisions of the Bankrupt Act, were questions that were raised in the state supreme court by the original printed briefs before the motion for a rehearing was made, and although not expressly mentioned in the opinion, were necessarily by the affirmance of the judgment, decided adversely to the plaintiff in error.

QUESTIONS INVOLVED.

FIRST. The suit is brought by the trustee to recover an alleged preference. The right of the Bank to retain what it received by the transfers and its immunity from liability as well as the right of the trustee to recover, depends on the Bankrupt Act.

The complaint contains no allegation that creditors had filed any claims in the bankruptcy court, and does not allege any facts showing what amount, if any, it is necessary for the trustee to recover in order to pay claims of creditors that had

been filed or allowed in the bankruptcy court. The question of whether or not the trustee represents creditors and whether or not the trustee can recover a voidable preference not necessary to pay claims of creditors, is a Federal question. The Bank demurred to the complaint on this ground, among others, The trial court over-ruled the demurrer and due exception was taken (Record 34). The ruling on this demurrer was reviewed by the decision of the state supreme court and decided adversely to the Bank, the plaintiff in error. The state supreme court in passing on this question said: "Counsel for defendant further claims that the complaint is defective in not alleging that any creditor had filed a claim in the bankruptcy proceedings, or any facts showing that it was necessary to recover the alleged preference." The court then quoted Section 60b of the Bankrupt Act and said: "No condition precedent to the right of the trustee to recover such property is found in the statute as will be seen and obviously courts cannot legitimately engraft any upon it."

The state supreme court in its opinion on this subject, as well as in its decision in refusing to hold that the judgment was excessive, decided that the trustee in bankruptcy was authorized under Section 60b of the Bankrupt Act to recover the full amount of a voidable preference without regard to the question of the amount of debts of the bankrupt and without regard to the question of what amount, if any, of such voidable preference was necessary to be used to pay the claims of other creditors. The state supreme court refused to hold the proposition contended for by counsel for the Bank, that the trustee represented the creditors, that the recovery could be had only for the benefit of the creditors, and that a voidable preference could not be recovered from one creditor who had not filed his claim in the bankrupt court merely for the purpose of returning it to the bankrupt.

SECOND. The suit was brought to recover the value of logs and lumber which the complaint alleged the bank had received as a voidable preference.

The proof showed that the Bank had not received any logs or lumber; that it did at one time have a chattel mortgage on a portion of the logs and lumber, but that when the property was sold the mortgages were released, and that the Bank received certain notes and money as the proceeds of that sale. Judgment was recovered for these proceeds. It was contended by counsel for the Bank that a voidable preference is not nec-

essarily void, but becomes void only when the trustee elects to avoid it, that even if the Bank received a voidable preference consisting of notes and moneys, the trustee never elected by suit or otherwise to avoid that particular preference; that the bringing of suits for logs and lumber which the Bank did not receive nor convert to its own use, was not an election to avoid a preference consisting of promissory notes; that it was not a mere question of pleading or of variance between the pleading and the proof, but that the objection went beyond that and went to the right of the plaintiff to recover judgment under the provisions of the Bankrupt Act. The plaintiff trustee objected to the judgment he received. That judgment was not granted on the trustee's motion, but on the court's own motion against trustee's objection. The trustee appealed to the state supreme court, claiming that he had the right to recover the full value of the logs and lumber for which he sued. The trustee therefore did not elect to avoid the preference.

The rule that a voidable preference is valid in all respects until the trustee elects to avoid it, is fully and ably discussed in *Swartz v. Frank* (Mo.) 82 S. W. 60.

This is necessarily a Federal question. Both the trial court (Record 398) and the state supreme court held that the Waters Clark Lumber Company was not agent for the Bank, that there was no evidence to sustain such claim and that the Bank did not receive the logs or lumber, but the state supreme court held that because the Bank received some of the proceeds of the sale of property on which it had held a chattel mortgage, that it in effect received a portion of the logs and lumber which were covered by the mortgage.

If the Bank received a preference, it is a Federal question under the Bankrupt Act as to what that preference consisted of, as to whether or not the preference consisted of logs or lumber or notes and moneys. It is also a federal question whether or not the trustee can sue for one preference and recover for another preference which he has not elected to avoid. The Federal statute determines what it is that constitutes the preference. The trustee has no right to determine what shall constitute the preference. Where a preference has been received, the trustee's only right of election is to determine whether or not that particular preference shall be avoided. He has no right to decide whether one kind of property or another kind of property shall constitute the preference.

THIRD. There is included in the judgment against the

plaintiff in error, the sum of $1,335.62, the net proceeds of the sale of the Up River logs on which the Bank never held any mortgage, and which logs were never transferred to the Bank. The state supreme court apparently supposed that the Up River logs were included in the chattel mortgage.

Is the Bank liable under the Bankruptcy Act for having received from Young this $1,335.62 in a note of the Waters Clark Lumber Company, in a suit brought to recover the value of logs and lumber in which the Bank never had any claim as purchaser, mortgagee, or otherwise, assuming that this $1,335.62 was received as a voidable preference, where the preference had never been avoided by the trustee? This is a Federal question. Even if these logs had been included in the mortgage as the state supreme court assumed, it is still a Federal question.

FOURTH. The question raised by the fourth assignment of error is sufficiently covered by what has already been said.

FIFTH. At the time of the transfers in question, Young was indebted in the sum of several thousand dollars for wages of servants who had worked on the logs and lumber within three months prior to that time. Time checks for some of these labor claims were held by the Bank, but there was a large amount of such labor claims which the Bank did not hold (Record 374). These labor claims were all paid out of the proceeds of the sale of the Up River and Cadott logs. Most of the notes and time checks held by the Bank against Young contained the endorsement of other parties. The trial court in submitted the case to the jury as to whether or not the transaction constituted a preference, charged the jury that the creditors were all creditors of the same class. The Bank duly excepted to this charge (Record 390-391). The correctness of this charge was argued in the state supreme court and that court held that there was no error in the charge, on the ground that it was immaterial to the Bank whether or not creditors were creditors of the same class.

The state supreme court was clearly wrong in this ruling because by the plain provisions of the Bankrupt Act, a transaction cannot constitute a preference unless it enables one creditor to obtain a greater percentage of its debts than other creditors of the same class. Creditors in a subsequent class, or lower class, would not be entitled in any event to receive any part of their claims until the creditors in a prior class were paid. It therefore becomes important in the first instance to

determine to what class the creditors belonged. If the jury had been charged as they should have been, that these claims for wages were claims of creditors of a higher class, their verdict would probably have been the other way. If the claims of creditors holding notes secured by indorsement, are creditors of a different class than creditors holding unindorsed paper, as was held in *Doyle v. Milwaukee National Bank*, 116 Fed. 295, the charge was also erroneous on that ground.

SIXTH. It was contended by counsel for the Bank both in the trial court and in the supreme court, that under a proper construction of the word "preference" as defined by the Bankrupt Act, that there was no evidence sufficient to justify the finding that the Bank had reasonable cause to believe that a preference was intended.

The state supreme court held that the evidence was sufficient to prove that Young was insolvent and that the Bank was chargeable with notice thereof, and held that those two facts being shown, to wit, the insolvency of Young and notice thereof by the Bank, that it necessarily followed that if the Bank received *any percentage whatever* of its claim, that that necessarily and as a matter of law constituted a voidable preference. The question is therefore not a question of fact, but a question of law. The Bank had a large claim, several times larger than all other creditors combined. It collected 26½ per cent of its claim. From all the information that the Bank had, Young had plenty of property left to pay all other creditors in full, although he was insolvent and unable to pay the balance of the Bank's claim in full. Such a transaction by the plain provisions of the Bankrupt Act does not constitute a preference that could be avoided by the trustee. The finding of fact of the jury, unsupported by any evidence, was not binding on the state supreme court, and it was the duty of that court, as well as its uniform practice in such cases to set aside such finding. The state supreme court refused to set aside the finding, basing its decision on an erroneous view of the Bankrupt Act. The opinion of the state supreme court when read in the light of the evidence, which is plain and explicit on this subject, makes it clear that the state supreme court sustained this finding on the ground held by that court that the word "preference" means the collection by a creditor of *any portion* or *any percentage* of the creditor's claim against his insolvent debtor. It cannot be seriously contended that the finding could be sustained on any other theory.

The state supreme court says in its opinion, "It is claimed however by counsel for defendant, that unless the enforcement of the mortgages would operate to give defendant a greater percentage of its debt than other creditors of the same class would receive, the mortgages did not amount to a conveyance of property, or in other words a preference within the meaning of the Bankrupt Act. We do not so understand the law. The federal statute renders void any preference given under the circumstances specified therein, and as we have seen, gives the trustee in bankruptcy the right to recover any property, or its value, conveyed in violation of such act."

The Bankrupt Act of 1898 is different in this respect from the Bankrupt Act of 1867. Under the Bankrupt Act of 1898 there is no room for the construction placed upon it by the state supreme court. By that construction the words "and the effect of the enforcement of such * * * transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class" must be stricken out, and in their place must be substituted the words "and the effect of the enforcement of such transfer will be to enable any of his creditors to collect any portion whatever of his debt." This presents a Federal question.

If the plaintiff in error is right upon its construction of this provision of the Bankrupt Act, it should have that right determined by this court. It would be an anomalous, as well as an unfortunate situation, for the plaintiff in error, if not being liable under the law or evidence, yet must pay this judgment on the ground that there is no court that can give it relief. The state supreme court refused to give relief ,basing its decision on an erroneous view of a Federal statute. If this court should refuse to reverse that judgment and should refuse to require the Federal law to be properly applied to the facts, then the Bank, although not liable under the law or the facts, is without a remedy in any court. The question presented to this court is not a question of fact, but the question is, did the state supreme court place an improper construction on a Federal statute in deciding a question of fact in a case where a proper construction was material or vital in order to arrive at a correct conclusion?

SEVENTH. The seventh, eighth and ninth assignments of error involve a similar federal question to that raised by the first assignment of error, as to whether or not the trustee in bankruptcy represents the creditors, and whether or not in a

case where the trustee sues to recover a voidable preference, can he recover the entire value of the preference irrespective of the amount necessary to pay the claims of creditors? Can a larger judgment be recovered from the Bank than is necessary to pay the claims of all the other creditors? Can anything be collected to pay fictitious claims that are not supported by any proof? Can anything be collected to pay claims of creditors who had themselves received a voidable preference, and whose claims are not entitled to be filed or allowed in the bankrupt court? Is the trustee a trustee for the creditors? If not, for whom is he trustee? For whose benefit does he collect the trust fund? Is the preference to be collected for the benefit of the bankrupt and returned to him under Section 66b of the Bankrupt Act?

If the right of the trustee to recover in such a case is limited no recovery can be had under the evidence in this case, in excess of $2,523.67, with interest and costs.

These are questions that were raised and argued in the state supreme court. They were decided adversely to the plaintiff in error, but no special mention is made of them in the opinion, presumably because the state supreme court in passing on other questions in the case held that the creditor receiving the voidable preference in such case, is absolutely liable for the entire value of the property received without condition or exception. The court expressly so held in holding that the complaint was sufficient under Section 60b of the Bankruptcy Act. The court also in passing on the charge of the trial court, with reference to creditors of the same class and the meaning of the word preference, apparently gives the statute the same construction. These are all Federal questions which are raised by the record in this case and which give this court jurisdiction to review the judgment.

The decisions of this court are numerous that in such a case this court has jurisdiction on a writ of error issued to review the judgment of a state court.

Factors and Traders Insurance Company v. Murphy, 111 U. S. 738; 28 L. ed. 582.

Traer v. Clews, 115 U. S. 528; 29 L. ed. 467.

Dimock v. Revere Copper Co., 117 U. S. 559; 29 L. ed. 994.

Palmer v. Hussey, 119 U. S. 96; 30 L. ed. 362.

Winchester v. Reiskell, 119 U. S. 450; 30 L. ed. 462.

Williams v. Heard, 140 U. S. 529; 35 L. ed. 550.

Dushane v. Beall, 161 U. S. 513; 40 L. ed. 791.
McCormick v. Market National Bank, 165 U. S. 538; 41 L. ed. 817.
Farmers and Merchants Ins. Co. v. Dobney, 189 U. S. 301; 47 L. ed. 821.
Crawford v. Burke, 195 U. S. 176; 49 L. ed. 147.
Kaufman v. Tredway, 195 U. S. 271; 49 L. ed. 190.
Thompson v. Fairbanks, 196 U. S. 516; 49 L. ed. 577.
Humphry v. Tatman, 198 U. S. 91; 49 L. ed. 956.

The above are all cases in which this court sustained its jurisdiction on writs of error issued to review judgments of state courts. Most of these cases are suits in which questions arose as to rights of parties under bankrupt acts. Several of the cases are suits by trustees in bankruptcy to recover alleged preferences and some of the cases, including the two recent cases of *Kaufman v. Tredway,* 195 U. S. 271, and *Humphry v. Tatman,* 198 U. S. 91, are such suits, in which judgment in the state court was rendered in favor of the trustee and against the creditor receiving the alleged preference where the judgments were reversd in this court on writs of error sued out by the defendants in the state courts.

In the case of *Nutt v. Knut,* decided by this court January 2, 1906, the court said: "A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States, may be fairly held within the meaning of Section 709, to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary."

Numerous authorities are there cited in support of this proposition, and cases tending to sustain a contrary view were disapproved.

This is a motion by the defendant in error to dismiss the writ on the ground that this court has no jurisdiction to determine or pass upon the questions involved. There is not joined with the motion any motion under Rule 6, to affirm, on the ground that although the court has jurisdiction, that the judgment was manifestly right.

We therefore do not consider it either necessary or proper at this time, or in this brief, to cite authorities or make any argument on the question of the correctness of the decision of the state supreme court on the Federal questions involved, further

than to merely call attention to what those questions are.

Respectfully submitted,

BURR W. JONES,
JAMES WICKHAM, and
FRANK R. FARR,
Counsel for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905

No. 163

Office Supreme Court U. S.
FILED
APR 14 1906
JAMES H. McKENNEY,
Clerk.

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error,

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, A BANKRUPT,

Defendant in Error.

Petition, Affidavit, Motion and Notice for Certiorari for Diminution of Record.

BURR W. JONES,
JAMES WICKHAM AND
FRANK R. FARR,

Counsel for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905

No. 511

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error,

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, A BANKRUPT,

Defendant in Error.

(PETITION)

To the Honorable Justices of the Supreme Court of the United States:

The Eau Claire National Bank, the plaintiff in error above named, respectfully shows to the Court that the transcript certified up by the Clerk of the Supreme Court of the State of Wisconsin is incomplete, in this, to wit, that there is omitted from said transcript a certain certificate of the Supreme Court of the State of Wisconsin, certifying to certain Federal questions that were raised in, and decided by, said State court, which certificate has been signed by Honorable John B. Cassoday, the Chief Justice of said State court, and is of record in said Supreme Court of the State of Wisconsin;

Wherefore, the plaintiff in error prays that a writ of certiorari for diminution of the record be issued and directed to the Judges of the said Supreme Court of the State of Wisconsin, commanding them, that searching the records and proceedings in said cause, they forthwith certify to this Court the parts of said records so omitted as aforesaid.

EAU CLAIRE NATIONAL BANK, Petitioner,
By W. K. COFFIN, President.
BURR W. JONES,
JAMES WICKHAM and
FRANK R. FARR,
Counsel for Petitioner.

(AFFIDAVIT)

STATE OF WISCONSIN, } ss.
Eau Claire County, }

James Wickham, being duly sworn, on oath says that he is one of the counsel for the above-named Eau Claire National Bank, plaintiff in error, in the above-entitled cause; that he has read the foregoing petition, and knows the contents thereof, and that the facts stated in said petition are true.

JAMES WICKHAM.

Subscribed and sworn to before me this 9th day of April, 1906.

L. M. MCCUMBER,
Notary Public, Eau Claire County, Wisconsin.

(MOTION)

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 511.

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error,

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, A BANKRUPT,

Defendant in Error.

Comes now the said Eau Claire National Bank, plaintiff in error, by Burr W. Jones, James Wickham and Frank R. Farr, its counsel, and suggests diminution of the record in this cause in this, to wit:

That a certificate of the Supreme Court of the State of Wisconsin, signed by Hon. John B. Cassoday, the Chief Justice of said state court, certifying to certain Federal questions that were raised in and decided by said State Supreme Court, is of record in the Supreme Court of the State of Wisconsin, and is omitted from the transcript,—

Wherefore, the said plaintiff in error moves the Court, under Rule 14, to award a writ of certiorari, to be issued and directed to the Judges of said Supreme Court of the State of Wisconsin, commanding them, that searching the record and proceedings in said cause, they forthwith certify

to this Court those parts of the said records so omitted as aforesaid.

Dated, April 9, 1906.

BURR W. JONES,
JAMES WICKHAM, and
FRANK R. FARR,
Counsel for Plaintiff in Error.

(NOTICE)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

No. 511.

EAU CLAIRE NATIONAL BANK,
Plaintiff in Error,

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, A BANKRUPT,
Defendant in Error.

To W. P. Bartlett, C. T. Bundy and Roy P. Wilcox, Counsel for Defendant in Error:

Please take notice that on the 30th day of April, 1906, at the opening of Court on that day, or as soon thereafter as counsel can be heard, the motion of the plaintiff in error for a writ of certiorari for diminution of the record, of which motion the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Dated April 9, 1906.

BURR W. JONES,
JAMES WICKHAM AND
FRANK R. FARR,
Counsel for Plaintiff in Error.

Due service of the annexed and foregoing petition, affidavit, motion and notice, is hereby admitted this 9th day of April, 1906.

WM. P. BARTLETT, C. T. BUNDY AND R. P. WILCOX,
Counsel for Defendant in Error.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 163

Office Supreme Court, U.S.
FILED.
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JAMES H. McKENNEY
Clerk

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error.

vs.

RALPH W. JACKMAN, as Trustee of the Estate of JOHN H. YOUNG, Bankrupt,

Defendant in Error.

In Error to the Supreme Court of the State of Wisconsin.

Brief and Argument of Plaintiff in Error

BURR W. JONES,
JAMES WICKHAM,
FRANK R. FARR,

Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. 163

EAU CLAIRE NATIONAL BANK,
Plaintiff in Error,

vs.

RALPH W. JACKMAN, AS TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, BANKRUPT,
Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN

Brief and Argument of Plaintiff in Error

Statement of the Case.

The Pleadings

The suit was commenced by the defendant in error as plaintiff in the Circuit Court of Eau Claire County, Wisconsin, by the service of a summons and complaint on July 7, 1902 (record 7).

The complaint alleged that on June 7, 1902, John H. Young was adjudged a bankrupt in the District Court of the United States for the Western District of Wisconsin; that on June 23, 1902, Ralph W. Jackman was appointed trustee; that the Eau Claire National Bank was a banking corporation, organized under the laws of the United States (record 2); that Young owned certain logs and lumber worth $35,000.00; that Young owed the bank $27000.00 (record 3); that on February 10, 1902, Young, while insolvent executed to the Bank a chattel mortgage on certain logs and lumber to secure his indebtedness to the bank (record 4); that on March 10, 1902, Young transferred to the bank the logs and lumber covered by the chattel mortgages, together with certain other logs, by making a bill-of-sale thereof to the Waters-Clark Lumber Company as nominal vendee, but which Lumber Company was alleged to be acting for and in behalf of the bank. It was also alleged that

this transfer was in violation of the bankrupt law; that it constituted an unlawful preference, and enabled the bank to obtain larger percentage of its debt than other creditors of the same class (record 4, 5); that the bank in this manner appropriated the bankrupt's property to the payment of its own indebtedness to the value of $35,000, for which sum judgment was demanded (record 6.) The bank demurred to the complaint, on the ground, among others, that the complaint did not state facts sufficient to constitute a cause of action (record 8.) This demurrer was over-ruled by the trial court (record 10).

The bank answered, admitting that Young was adjudged a bankrupt; that Jackman was appointed trustee; that the bank was a banking corporation; that in February 1902, Young executed and delivered to the bank certain chattel mortgages on certain logs and lumber (record 11), alleging that in March, 1902, Young sold the logs and lumber to the Waters-Clark Lumber Company; that the proceeds of such sale were used to pay certain liens against the property. The answer also denied all the allegations of the complaint not expressly admitted, and contained the following allegation: "That neither the said mortgages, nor the payments made to the defendant as aforesaid, were made, given or received for the purpose of giving the defendant a preference over other creditors of said Young, contrary to the provisions of said bankruptcy law" (record 12). The trustee based his right to recover on the provisions of the bankrupt act. The bank defended, basing its right to hold what property it received and its immunity from liability on the provisions of the bankrupt act. The bank, by its answer, specially set up and claimed that the mortgages and payments it received were not given or received in violation of the provisions of this Federal statute.

The Trial in the State Court.

The case was tried before the court and a jury. A special verdict was rendered covering some of the issues in the case (record 14-15). Some of the issues in the case were decided by the court without a jury (record 17,18). Many of the issues in the case were determined by the undisputed evidence upon which no finding was made, either by the court

or the jury. On September 18, 1903, the trial court ordered judgment in favor of the trustee and against the bank for $6254.99, with interest and costs (record 408, 409). On the same day such judgment was entered, amounting with interest and costs to $6843.77 (record 22,23). The trial court made a decision in writing, which has been incorporated in the bill of exceptions, showing the grounds upon which its decision is based (record 394 to 404).

The Appeal to the State Supreme Court.

Both parties appealed to the Supreme Court of the State of Wisconsin, in which court the judgment of the Circuit Court was affirmed on both appeals on June 23, 1905 (record 435); both parties filed motions in the State Supreme Court, for a rehearing (record 460, 462), and both motions for a rehearing were denied by the State Supreme Court on October 3, 1905 (record 462). See *Jackman, Trustee, v. Eau Claire National Bank*, 125 Wis. 465.

The State Supreme Court, by Justice Kerwin, filed an opinion which has been made a part of the record (record 437, 460). The Chief Justice of the Supreme Court of the State also made a certificate, certifying to certain Federal questions in addition to those mentioned in the court's opinion, which were specially set up and claimed by the bank as a right and immunity of the bank, and also certifying that said questions were considered by the court and decided adversely to the bank, which certificate is also made a part of the record (record 466, 467).

To review the judgment rendered against it, the plaintiff in error has brought the cause to this Court by a writ of error issued to the State Supreme Court.

The Transfers of the Bankrupt's Property.

The evidence shows that the chattel mortgages dated February 10, 1902, were in fact delivered on or about February 20, 1902. The mortgages and notes which they secured were given as collateral security for what Young was then owing the bank on promissory notes and time checks given for labor claims performed on the logs and lumber and also to secure further advances which the bank should make upon other similar time checks which should thereafter come into the hands of the bank (record 108, 313). The

mortgages were never foreclosed. The property was not taken by the bank, but the mortgages were released afterwards when Young sold the property to the Waters-Clark Lumber Company. (Record 56, 86.) The allegations of the complaint to the effect that in the sale of the logs and lumber the Waters-Clark Lumber Company acted as trustee or agent of the bank is not sustained by any evidence, but on the contrary, the evidence shows that this property was sold to the lumber company in the usual course of business (record 313, 340, 350). Findings 3 and 4 of the special verdict bearing on this subject (record 14) are somewhat ambiguous, but both the trial court (record 399) and the State Supreme Court (record 447, 448) held that the evidence did not sustain this allegation of the complaint. On this question the Supreme Court said: "However the evidence seems to clearly establish that the Lumber Company purchased the property from Young in the regular course of business, without any understanding with the defendant other than that its interest in the property as mortgagee and claimant under numerous statutory labor liens, should be recognized and the equivalent thereof in money delivered to it out of the proceeds" (record 448).

The lumber was sold March 3, 1902 (record 39) and the logs were sold March 29, 1902 (record 40).

The following statement shows the sales that were made of the property in question and the disposition of the proceeds.

Sales of Property.

Lumber sold by Young to Waters-Clark Lumber Company (record 39, finding 2, record 17)	$ 3452 85
Cadott logs sold by Young to Waters-Clark Lumber Company (record 40, 18, 21)	10077 85
Up-river logs sold by Young to Waters-Clark Lumber Company (record 40, 18, 21)	11055 84
Amount Waters-Clark Lumber Company overpaid Young by mistake (see stipulated facts, record 374, 375; also record 457, 458)	413 03
Total proceeds of sales	$ 24999 56

Disposition of Proceeds.

Note of Waters-Clark Lumber Company to Young for lumber and by Young endorsed to bank (record 39, finding 3, record 18, 21)	$ 3452 85	
Lienable labor claims on Cadott logs paid out of proceeds of sale of logs (record 374)	8212 35	
Lienable labor claims against up-river logs, paid out of proceeds of sale of logs (record 375)	6052 46	
Amount paid out of proceeds of logs to William McKinnon for his interest in logs (record 375)	2627 95	
Amount paid to other persons out of proceeds of up-river logs for their interest therein (record 375)	1039 81	
Amount paid bank for non-lienable time-checks held by bank, Ferbruary 20, 1902 (record 375)	700 00	
Amount paid for non-lienable time-checks acquired by bank between February 20th and March 29th, 1902, and secured by bank's mortgage (record 375, 403)	406 00	
Note of Waters-Clark Lumber Company to Young for net proceeds of sale of logs and by Young transferred to the bank (record 18, 21, 83)	2508 14	
Total		$ 24999 56

The Judgment was Arrived at by Charging the Bank with the Following Items (record 403, 458):

Note for purchase price of lumber of Waters-Clark Lumber Company to Young and transferred by Young to the bank	$	3452 85
Note for net proceeds of logs from Waters-Clark Lumber Company to Young and by Young transferred to bank		2508 14
Cash paid bank for non-lienable time-checks held by bank, February 20, 1902		700 00
Total	$	6660 99

Cr.

Amount by mistake overpaid to Young on purchase price of logs, $413.03, less $7.03 omitted by another mistake (record 458).....	$ 406 00	406 00
Amount of judgment against bank, without interest and costs (record 403).....		$6254 99

Up-River Logs.

The up-river logs were not included in the bank's mortgage. The bank held two mortgages, one on the lumber and one on the Cadott logs (record 64, 66). The Cadott logs were located 2 to 4 miles from Cadott (record 41). The up-river logs were located from 10 to 22 miles from Cadott (record 39). The chattel mortgage on the logs covered only the Cadott logs (record 64). The bank held no mortgage on the up-river logs (record 85, 311, 389).

There is included in the judgment rendered against the bank the sum of $1335.62 as the net proceeds of the sale of the up-river logs, after paying other claims against them. This fact appears by the undisputed evidence (record 95, 96). It also appears from the findings of the court and the stipulated facts as is shown by the following statement:

The purchase price of the up-river logs (record 40) and value as found by the court (record 21).....		$11055 84
It was stipulated (record 375) that the proceeds of this sale was applied as follows:		
Applied to payment of lienable claims.....	$6052.46	
Paid William McKinnon.....	2627.95	
Paid other persons amounts due on logs.....	1039.81	9720.22
Balance of proceeds of sale of up-river logs...		$1335.62

This balance of $1335.62 formed a part of the consideration of the note of $2508.14 given by the Waters-Clark Lumber Company to Young, as the net proceeds of the sale of the two last lots of logs, and by Young transferred to the bank (record 95, 96).

The State Supreme Court in its opinion apparently supposed that the up-river logs were covered by the bank's mortgages, and held that the bank was liable only to the extent of its chattel mortgage

interest in the logs and lumber which finally came into its possession in the form of money (record 447). The court also, after referring to the fact that the judgment was excessive in the sum of $7.00, said: "The amount of the judgment, as we view the matter, is substantially the equivalent of the property which the defendant secured by its mortgages. That is all the property as appears from the record which it obtained in fraud of the bankrupt act" (record 458).

Young's Indebtedness to Bank.

The following is a statement of the amount owing by Young to the bank on March 29, 1902, not including lienable claims held to be valid security, but including payments for which the bank was held liable:

Date.	*Face.*	*Prin.*	*Int.*	*Total.*	*Exhibit*
April 2, 1900	$8000.00	$4145.34	$948.22	$5093.56	F
Oct. 15, 1900	4902.98	243.93	348.65	592.58	S
January 1, 1901	4350.90	4176.46	423.69	4600.15	R
April 15, 1901	6593.31	6511.84	501.57	7013.41	Q
July 15, 1901	5236.07	4613.93	283.05	4896.98	P
October 15, 1901	361.66	361.66	13.18	374.84	O
Mill Supply Co. Note				377.00	
Non-lienable time checks held Feb. 20, 1902				700.00	
Total				$23648.62	
Paid on above out of proceeds of sales for which judgment was rendered				6254.99	
Balance still unpaid				$17393.53	

Percentage of bank's claim collected, $6254.99 ÷ $23648.52 —26¼ per cent.

(Record 104 to 107; also copies of notes with endorsements, record 423 to 428).

Young's Indebtedness to Other Creditors.

The following is a statement of debts owing by Young to creditors other than the bank on February 20, 1902, on which unsecured claims were filed in the bankruptcy proceeding:

Standard Oil Co.	$ 36.89
E. A. Martin	75.00
Sallie F. Moon	5360.14
Dells Milling Co	51.92
Nichols, Dean & Gregg	69.65
D. Shaw Lumber Co	104.62
W. J. Davis	90.68
A. A. Cutter	35.45
W. S. Monroe	25.00
S. R. Keiser	50.00
Fritz Miller	50.00
J. M. Vizenda	48.90
Peter Dietzler	40.88
Henry Frazle	117.60
Alex. Lentz	160.00
Frank Zimmerman	25.00
Swift & Co	24.75
S. C. Brooks	95.65
Eau Claire Grocer Co	1496.68
Eau Claire Mill Supply Co	373.37
	$8322.18

(Record 98, 99 and 144 to 148.)

The statement does not include a claim of the Valley Lumber Company, of $2500.00, for the purchase price of certain mill property in the City of Eau Claire, which claim was secured by a contract for a deed of the property (record 247). After this contract was made, extensive improvements were made on the property, and a large amount of mill machinery was attached to the real estate in such a way as to make it a part of the freehold (record 138, 232). There was no evidence that this mill property, together with the added improvements and machinery, was not adequate security for the payment of this claim. The claim was filed in the bankruptcy court as a secured claim. No portion of it being filed or allowed as being an amount in excess of the value of the security (record 99, 271, 265).

Some other claims were filed in the bankruptcy court, but no proof was offered to show that Young ever owed any of them. The proof expressly shows that Young did not owe such claims on February 20, 1902 (record 148). Some

of these claims purport to have been incurred after the time of the transfer in question. The evidence that such claims were filed was not offered as proof of the existence of the indebtedness. Counsel for the trustee expressly stated at the time that they were not offered for such purpose (record 263).

The total claims filed in the bankruptcy proceeding amount to $12355.54 (record 98, 99).

The Bank's Information of Young's Indebtedness at the Time of the Making of the Transfers in Question.

On February 1, 1902, shortly before the mortgages were given, Young submitted to the bank an itemized statement in writing of his assets and liabilities, which statement showed that his property was worth $42241.25, that he was owing labor claims amounting to $822.59, and that all his other debts, aside from what he was owing the bank, amounted to $1328.77 (record 421, 422). These labor claims, amounting to $822.59, were paid out of the proceeds of the sale (record 60, 91). A few days afterwards, Mr. C. W. Lockwood and D. S. Clark, officers of the bank, went to Young's place of business and made a careful examination of his books and accounts to ascertain his financial condition (record 75). From such information as they could get, the entire outstanding indebtedness of Young at that time, aside from what he was owing the bank, and aside from what was paid out of the proceeds of the sale, was $1353.90. They took a written memorandum of these items, showing the names and amounts which Young informed them was the extent of his indebtedness (record 88). This evidence is undisputed. Two of these claims were afterwards paid, one being the claim of C. W. Cheney & Co. for $82.50, which was afterwards paid by the bank, and the other being the claim of J. A. Smith for $300.00, which he afterwards collected from some insurance money (record 306). The claim of E. M. Fish Company for $350.00 was for work done on Young's house in Eau Claire, worth $4500.00 (record 89,90), and which under the Wisconsin Statutes would be secured by mechanic's lien upon the property. Young stated that he would borrow the money on the house to pay the claim of E. M. Fish Company (record 89). Young testified that he informed W. K. Coffin, an officer of the bank,

of his indebtedness to Mrs. Moon and his indebteness to the Valley Lumber Company (record 156). In this he is contradicted by the positive testimony of Mr. Coffin (record 307), who is corroborated by Mr. Keith (record 342); also by Young's written financial statements (record 415 to 422) and by the circumstance that the bank continued to advance money to Young without security.

Under this evidence, without taking into consideration the debts that Young was owing to the bank and the claims paid out of the proceeds of the sale of the property, and without including the claim of the Valley Lumber Company, which was secured, the following is a statement of the entire debts of Young of which the bank or any of its officers had any notice or information at the time of the transactions in question.

The statement is based on the evidence most favorable to the trustee.

Debts according to statement furnished Lockwood $1353.90 (record 88), less item of C. W. Cheney $82.00 in the meantime paid by the bank (record 306)	$1271.90
Claim of J. A. Smith, shown in statement of February 1, 1902 (record 422)	300.00
Mrs. Moon's note, with interest, less $600 payment (record 155)	5835.00
Total	$7406 90

Property worth 26⅓ per cent of $7406.90, or $1962.82, would have been sufficient to pay these creditors a percentage equal to that received by the bank.

The Bank's Information of What Property Young Has Left Available for the Payment of Other Debts

At the time of the transfers in question, the bank had information which its officers believed, and were justified in believing, that Young had other property left outside of his homestead amply sufficient to pay in full the claims of all his other creditors.

According to the information of Mr. Lockwood, Young had property left, not including his home, worth $22267.69 (record 90). According to the information of Mr. Coffin, Young still had property worth $25,380.00 (record 315).

These estimates were based upon Young's written statements, and on such other information as the bank could obtain. Young shortly afterwards claimed to have cash in his pocket to the amount of $2000.00. He so informed Mr. Lockwood, according to the undisputed evidence (record 87).

According to the undisputed evidence, and making all reasonable allowances and deductions for any conflict there may be in the evidence, the officers of the bank believed, and were justified in believing, that on March 29, 1902, Young had property left outside of his homestead, available for the payment of the claims of other creditors, of which the following are some of the more important items:

Accounts receivable	$3000.00
Insurance (record 330)	1000.00
40 acres of land	280.00
Camp outfit, horses, wagons, hay, etc., at least	2000.00
Lath and shingles and other proceeds	1500.00
2 million feet of pine stumpage	6000.00
300 thousand feet of hard-wood stumpage	900.00
Total of above items,	$14680.00

(Record 81, 82, 88, 90, 314, 315, 330, 421, 209, 210.)

Illegal Preferences Collected by Other Creditors.

Sallie F. Moon filed an unsecured claim in the bankruptcy court for $5360.14, on a promissory note of $6090.00 and interest, and on which note was endorsed $1059.86 as paid on April 24, 1902 (record 264, 265). This claim was allowed in the bankruptcy court for the full amount less the payment (record 96).

The evidence shows that about that time Young made this payment, and that about $600.00 of the payment was made shortly before February 20, 1902, in the proceeds of shingles and lath sold the Northwestern Lumber Company (record 154).

W. S. Monroe filed in the bankruptcy court an unsecured claim for $25.00 which was allowed (record 98). The evidence shows that on March 12, 1902, Young paid Mr. Monroe $1672.05, partially in cash and partially in logs that were mortgaged to the bank (record 175½, 176). Young said he knew at that time he had not sufficient property to pay his debts (record 255).

If the claims of Sallie F. Moon and W. S. Monroe were deducted from the total amount of the debts of the bankrupt's estate which he was owing at the time of the transfers in question (these claims not being provable under the bankrupt law), the sum total of the other debts which could be affected by the alleged preference would not exceed $2897.04.

The Questions Involved and the Manner in which They are Raised.

Question 1—Can a trustee in bankruptcy under the provisions of the bankrupt act, lawfully maintain a suit to recover the value of a voidable preference without first electing to avoid such preference by notice to the creditor receiving such preference, and by demand for its return?

How Question Raised. The complaint contains no allegation that the trustee gave such notice, or made such demand, before commencing the suit. The defendant demurred to the complaint as not stating facts sufficient to constitute a cause of action (record 8). The trial court overruled the demurrer (record 10), to which order due exception was taken (record 35). In the State Supreme Court error was assigned to this ruling, which assignment of error the State Supreme Court overruled (record 445).

Question 2—Can the trustee in bankruptcy under the bankrupt act, lawfully recover judgment for the value of a voidable preference without in any manner electing to avoid such preference, and without suing to avoid it, but merely by suing to recover some alleged preference that the creditor did not receive, and by recovering judgment for another and different alleged preference after the year has expired in which the creditor might have surrendered the preference received and filed his claim in the bankruptcy court under section 57g and 57m of the bankrupt act? And is this the legal effect of the facts disclosed by the record in this case?

How Question Raised. The suit was brought to recover $35,000.00, the value of logs and lumber alleged to have been sold by the bankrupt to the bank. The evidence shows that the logs and lumber had been sold by the bankrupt to the Waters-Clark Lumber Company, and that the bankrupt transferred to the bank a portion of the proceeds

of the sale consisting of promissory notes and moneys amounting to $6254.99, for which sum judgment was rendered. The trustee did not at any time, either before or during the trial, elect to take judgment for the amount for which judgment was rendered, but contended that the bank was liable for the entire value of the logs and lumber. The trustee moved for judgment for such value and for certain portions of such value, all of which motions the trial court overruled, and ordered judgment for the amount for which judgment was entered on the court's own motion (record 409). The trustee did not even then elect to accept said judgment, but appealed to the State Supreme Court and endeavored to recover a judgment for the entire value of the logs and lumber.

The trial court held, "the bank received the notes and not the logs and lumber" (record 399). The trial court also held: "It is the opinion of this court that a recovery may be had for the value of that which the bank received—the notes" (record 402).

Error was assigned in the State Supreme Court upon this ruling, and that the court held that the judgment should be sustained under the bankrupt act, on the ground that what the bank received, and for which judgment was recovered, "was its mortgage interest obtained in fraud of the bankrupt act" (record 453). The State Supreme Court also held that the amount of the judgment was the equivalent of the property the bank secured by its mortgages, and also said: "That is all the property as appears from the record which it obtained in fraud of the bankrupt act" (record 458).

The record shows that the suit was not brought to set aside the lien of the mortgages, that the mortgages and the liens thereof had gone out of existance at the time of the sale of the property to the Waters-Clark Lumber Company, that what the bank received was received by virtue of another transfer made by Young of certain notes and moneys which were transferred absolutely and not as security, and that of this amount, $1335.62 was the proceeds of the sale of the up-river logs in which the bank never had any interest as owner, purchaser, mortgagee or otherwise. The record also shows that the adjudication in bankruptcy was on June 7, 1902 (record 2, 11), and that the judgment was recovered on September 18, 1903 (record 22), after the time

had expired in which the bank might have surrendered any preference it received, and filed its claims in the bankruptcy court had the trustee elected to avoid such a preference.

This presents the question: Is the bank liable under the provisions of the bankrupt act, either for the $1335.62, or for any portion of the amount for which the judgment was rendered?

Question 3 — At the time of the transfers in question, Young owed debts of different kinds, as follows: (1) claims of general creditors that were unsecured; (2) claims secured by contract and statutory liens on Young's property; (3) claims secured by indorsements of sureties, and (4) wages due workmen and servants which had been earned within three months before that time (record 211). The claims of wages for workmen and servants were paid in full out of the proceeds of the sale. A portion of the proceeds was applied to the payment of the claims of persons who had liens on the property, and a portion of such proceeds was paid to the bank which held certain claims of the first three kinds mentioned. Certain other claims were filed and allowed in the bankruptcy proceeding, as preferred claims (record 99). These were probably claims for wages earned after the time of the transfers in question.

One of the questions involved is, Are these various kinds of creditors, all creditors of the same class within the meaning of section 60a of the bankrupt act?

How Question Raised. The trial court in its charge to the jury on the subject of whether or not the bank had received a preference, charged the jury that these creditors were all creditors of the same class within the meaning of section 60a of the bankrupt act (record 385). Due exception was taken to this charge (record 391, 392). Error was assigned in the State Supreme Court to this portion of the charge, and that court held that is was immaterial whether the charge was right or wrong, because that question would not arise until the time when the trustee come to administer the property which he sought to recover in this suit, and that if the property was obtained by the bank in fraud of the bankrupt act, the bank was liable in any event (record 449). The State

Supreme Court entirely overlooked the fact that under the provisions of the bankrupt act, it would be impossible to ascertain whether or not a preference had been received without first determining the question of whether the enforcement of the transfer would enable the bank to recover a greater percentage of its debt than other creditors of the same class.

Question 4—Under section 60a of the bankrupt act, does it constitute a preference for a creditor to receive from an insolvent debtor a certain percentage of the creditor's claim, where the debtor has other property left amply sufficient to enable all other creditors of the same class to obtain an equal percentage of their claims?

How Question Raised. The jury found against the bank on questions 9 to 12, inclusive, that the officers of the bank had reasonable cause to believe that a preference was intended (record 15).

In the state court the bank contended that on a proper construction of the word "preference" the evidence was insufficient to sustain this finding (record 456).

In the State Supreme Court facts and figures were shown demonstrating that under a proper construction of the bankrupt act, that there was no evidence to sustain this finding. The evidence showed, (1) that the bank's claim was a large claim—more than twice the amount of claims of all other creditors combined;— (2) that it collected by virtue of the transfers in question only 26½ per cent of its claim; (3) that from all the information the bank had, according to the evidence most favorable to the trustee, it was unable to discover other debts which could be affected by the transfer to an amount in excess of $7406.90; (4) that from all the information that the bank had, or could obtain, Young had ample property left with which to pay all his other creditors in full; and (5) that from such information the sum of $1962.82 would have been sufficient to enable Young to pay other creditors of the same class an equal percentage to that received by the bank.

The State Supreme Court refused to set aside the finding, basing its decision upon what we contend was an erroneous view of the bankrupt act. The State Supreme Court

sustained this finding on the ground that the word "preference" means the collection by the creditor of *any portion* or *any percentage* of the creditor's claim against an insolvent debtor. The State Supreme Court held that the evidence was sufficient to prove that Young was insolvent, and that the bank was chargeable with notice of such insolvency, and that when those two facts were shown, that if the bank received any percentage of its claim, that it necessarily followed as a matter of law that it received a preference (record 456).

The question presented to this Court is, Was there error in the decision of the State Supreme Court in its construction of this Federal statute as to the meaning of the word "preference" in section 60a of the Bankrupt Act?

Question 5—Does the trustee in bankruptcy, suing to recover an alleged voidable preference, represent the creditors who are entitled under the law and evidence to share in the distribution of the estate of the bankrupt, and is the amount which he is entitled to recover limited to such sum as is necessary to pay, with interest and costs, the claims of such persons as the evidence shows were in fact creditors who held claims which were provable and proven in the bankruptcy court? Can anything be collected to pay fictitious claims that are not supported by any proof? Can anything be collected to pay claims of creditors who had themselves received preferences and whose claims were not entitled to be filed or allowed in the bankrupt court? Can anything be collected for the benefit of the bankrupt for the purpose of returning it to him under section 66b of the Bankrupt Act?

How Question Raised. (a) The complaint contains no allegation that the claim of any creditor had been filed in the bankrupt court. It contains no allegation of what sum, if any, was necessary to be recovered from the bank to enable the trustee to pay claims of creditors. The bank demurred to the complaint on this ground among others. It objected on this ground, both in the circuit court and in the Supreme Court, to the sufficiency of the complaint, but its objections were overruled

(b) The evidence in the case showed what debts Young owed on February 20, 1902, the time of the giving of the

mortgages. The sum total of these debts, on which unsecured claims were filed in the bankrupt court, was $8322.18. (See statement under heading "Young's indebtedness to other creditors.")

Two creditors, whose claims amounted to $5655.14, and included in the above amount, had themselves received preferences, but notwithstanding that fact had filed their claims in the bankrupt court for the balance due them. See statement of fact under heading "Illegal preferences collected by other creditors.")

Certain other claims were filed in the bankrupt court, some of which purported to have accrued after the time of the transfers in question, but no evidence was offered to prove that any such indebtedness ever existed.

If the recovery had been limited to the amount necessary to pay the claims of such persons as were shown by the evidence in the case to be creditors of the bankrupt whose claims were proven in the bankrupt court, and entitled by the bankrupt act to be so proven, no recovery could have been had in excess of $2667.04, with interest and costs. These questions were presented by the bank to the State Supreme Court, and were by that court decided against the bank. That court held that section 60b of the bankrupt act made a creditor receiving such preference absolutely liable for the entire value of the preference received, without regard to the question of what, if any, claims were filed in the bankrupt court (record 446). What the court then said was with reference to the sufficiency of the complaint. The court, in its opinion, again used similar language in passing on the question of the assignment of error to the charge that the creditors were all of the same class (record 449). The questions of the right of the trustee to recover for the purpose of paying fictitious claims or claims unsupported by evidence or claims of persons who had themselves received preferences, are not specifically mentioned in the opinion, undoubtedly for the reason that what the court had said on the question of the sufficiency of the complaint, also applied to those questions; but it is shown by the certificate of the chief justice of the state court that those questions above referred to, not specifically mentioned in the opinion, were on the hearing

before the State Supreme Court specially set up and claimed by the bank as a right and immunity under the bankrupt act, and that on said hearing said questions were considered by the court, and were by it decided adversely to said bank (record 466-467). It appears by the record that these questions were involved. It appears by this certificate that they were specially set up and claimed, and it appears, both by the certificate and by the judgment of the State Supreme Court, that they were decided adversely to the bank.

Specification of Errors Relied Upon.

First—The Supreme Court of the State of Wisconsin erred in determining that the complaint of the defendant in error (the plaintiff in the state court) stated a cause of action, and in refusing to reverse the judgment rendered in favor of the defendant in error (the plaintiff in the state court) in the Circuit Court of Eau Claire County, for the failure of said complaint to state facts sufficient to constitute a cause of action.

Second—The said Supreme Court of the State of Wisconsin erred in determining that the defendant Eau Claire National Bank (plaintiff in error herein) was liable in said action for the value of the logs and lumber described in the plaintiff's complaint to the extent of the chattle mortgage interest of the defendant (plaintiff in error) therein.

Third—The said court erred in determining that the defendant (plaintiff in error) was liable in said action for having received as a preference, contrary to the provisions of section 60a and section 60b of the Bankrupt Act of July 1, 1898, as a portion of its chattel mortgage interest in said logs, the sum of $1335.62 as the proceeds of the sale of the portion of said logs known as the "up-river-logs," on which logs said defendant (plaintiff in error) never held any chattel mortgage, and which logs were never transferred to said defendant (plaintiff in error).

Fourth—The said court erred in determining that the defendant (plaintiff in error) was liable in said action for the value of those certain notes and moneys it had received for which the judgment in said action was rendered against it, as a preference, under the provisions of said Bankrupt Act, although the plaintiff trustee (defendant in error) had

not elected to avoid such preference by bringing suit to recover the same, and had not elected to avoid such preference in any manner whatever.

Fifth--The said court erred in determining that in order to ascertain whether or not the defendant (plaintiff in error) was liable for having received a preference under the provisions of the Bankrupt Act, it was immaterial whether or not the creditors of the bankrupt were all creditors of the same class, and said court erred in refusing to reverse said judgment because of the error of said circuit court in charging the jury that all the creditors of said bankrupt were creditors of the same class. The said charge on said subject being as follows: "So far as creditors' rights are involved in this action, they are all of the same class, by which is meant that they would all receive the same percentage of their claims. Claims for taxes or wages within certain times so as to be preferred, would be of a different class, but claims of creditors like those proven in the Young bankruptcy proceedings are all of the same class."

Sixth—The said court in determining that the defendant (plaintiff in error) had reasonable cause to believe that a preference was intended, erred in the construction of said Bankrupt Act in the following respects:

(a) In determining that where the effect of the enforcement of a transfer from an insolvent debtor is to enable any of his creditors to obtain any portion of his debt, and that transfer is followed within four months by the commencement of bankruptcy proceedings, that such a transfer would necessarily enable such creditor to obtain a greater percentage of his debt than other creditors of the same class, and would constitute a preference within the meaning of said Bankrupt Act;

(b) In determining that, although the effect of the enforcement of the transfer in question did not operate to give the defendant (plaintiff in error) a greater percentage of its debt than other creditors of the same class, that nevertheless such transfer constituted a preference within the meaning of said Bankrupt Act;

(c) In determining by such rules of construction of said Bankrupt Act that the evidence was sufficient to sustain

the finding that the defendant (plaintiff in error) had reasonable cause to believe that a preference was intended, whereas under a proper construction of said Bankrupt Act it appears by the uncontroverted evidence that said defendant (plaintiff in error) did not have reasonable cause to believe that a preference was intended;

Seventh—The said court erred in determining that the defendant (plaintiff in error), having received a preference which was voidable by the trustee, was for that reason liable in said action for the full value of such preference so received in an amount in excess of what was necessary to pay all the other creditors of said bankrupt;

Eighth—The said court erred in determining that the defendant (plaintiff in error) was liable to the plaintiff trustee (defendant in error) for moneys required by said trustee to pay claims of fictitious creditors whose claims were not proven by the evidence and claims of creditors who had themselves received preferences, and in giving judgment against defendant therefor;

Ninth—The said court erred in refusing to limit the recovery against the defendant (plaintiff in error) to such sum as should be sufficient, after the payment of expenses and costs, to pay all the other creditors of the bankrupt whose claims were provable and proven and entitled to be allowed under the provisions of the Bankrupt Act;

Tenth—The said court erred in affirming the judgment rendered against the defendant (plaintiff in error) in said action, and in refusing to reverse said judgment;

Eleventh—The said court erred in refusing to determine that the defendant (plaintiff in error) was entitled to judgment, and in refusing to direct judgment to be entered in its favor.

Argument and Authorities

The questions involved in this case depend upon the construction of the Federal bankrupt act of 1898. The transaction out of which the suit arose, the adjudication in bankruptcy, and the commencement of the suit, all took place in the year 1902, and prior to the amendment

of the bankrupt act of February 5, 1903. What is said in this brief in reference to the bankrupt act therefore refers to the act as it stood before the amendment. The decision in the State court is *Jackman, trustee, v Eau Claire National Bank*, 125 Wis. 465.

Jurisdiction of This Court.

The questions raised by the specification of errors are all Federal questions, involving the construction of the Federal bankrupt act. These questions were all specially set up and claimed in the state court by the plaintiff in error as a right and immunity under this Federal statute. Most of the questions are shown by the opinion of the State Supreme Court to have been there raised and to have been decided adversely to the plaintiff in error (record 437 to 460), and the other questions not expressly mentioned in the opinion are shown by the certificate of the Chief Justice of the State Supreme Court to have been specially set up and raised and decided adversely to the plaintiff in error (record 466, 467). Substantially all of the questions that were involved in the bank's appeal to the State Supreme Court, are the same questions that are now involved on this writ of error.

The decisions of this Court are numerous that in such a case this court has jurisdiction on a writ of error issued to review the judgment of a state court.

Factors & Traders Insurance Co. v. Murphy, 111 U. S. 738; 28 L. Ed. 582.
Traer v. Clews, 115 U. S. 528; 29 L. Ed. 467.
Dimock v. Revere Copper Co., 117 U. S. 559; 29 L. Ed. 994.
Palmer v. Hussey, 119 U. S. 96; 30 L. Ed. 362.
Winchester v. Heiskell, 119 U. S. 450; 30 L. Ed. 462.
Williams v. Heard, 140 U. S. 529; 35 L. Ed. 550.
Dushane v. Beall, 161 U. S. 513; 40 L. Ed. 791.
McCormick v. Market National Bank, 165 U. S. 538; 41 L. Ed. 817.
Farmers & Merchants Ins. Co. v. Dobney, 189 U. S. 301; 47 L. Ed. 821.
Crawford v. Burke, 195 U. S. 176; 49 L. Ed. 147.
Kaufman v. Tredway, 195 U. S. 271; 49 L. Ed. 190.
Thompson v. Fairbanks, 196 U. S. 516; 49 L. Ed. 577.
Humphrey v. Tatman, 198 U. S. 91; 29 L. Ed. 956.

The above are all cases in which this Court sustained its jurisdiction on writs of error issued to review judgments of state courts. Most of these cases are suits in which questions arose as to rights of parties under bankrupt acts. Several of the cases are suits by trustees in bankruptcy to recover alleged preferences, and some of the cases, including the two recent cases of *Kaufman v. Tredway*, 195 U. S. 271, and *Humphrey v. Tatman*, 198 U. S. 91, are such suits, in which judgment in the state court was rendered in favor of the trustee and against the creditors receiving the alleged preference where the judgments were reversed in this Court on writs of error sued out by the defendants in the state courts.

In the case of *Nutt v. Knut*, 200 U. S. 12-19, the Court said: "A party who insists that a judgment cannot be rendered against him consistently with the Statutes of the United States, may be fairly held within the meaning of section 709 to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary."

Numerous authorities are there cited in support of this proposition, and cases tending to establish a contrary view are disapproved.

In *Merchants National Bank of Cincinnati v. Wehrmann*, 202 U. S. 295, where it appeared that a national bank claimed in the state court immunity from liability under the United States banking laws, it was held that such claim was sufficient to sustain the appellate jurisdiction of the United States Supreme Court, although the bank did not in the first instance anticipate the specific and qualified form in which the immunity finally was denied.

When it appears by the opinion of the State Supreme Court, which has been made a part of the record, that a Federal question was there raised and decided against the plaintiff in error, that is sufficient to confer on the United States Supreme Court jurisdiction to review such question.

San Jose Land & Water Co. v. San Jose Ranch Co., 189 U. S. 177.

Mallett v. North Carolina, 181 U. S. 589.

Taylor on Jurisdiction of U. S. Supt. Court, p. 450.

The certificate of the State Supreme Court removes any doubt that might otherwise exist in the record as to the fact that the Federal questions involved were raised and presented in the state court, and decided adversely to the plaintiff in error.

Cincinnati P. B. S. & P. Packet Co. v. Bay, 200 U. S. 179.
Merchants National Bank v. Wehrmann, 202 U. S. 295.

The Trustee Has Not Elected to Avoid, or Brought Suit to Recover, any Preference that the Bank may have Received, and the Judgment Rendered Therefor Cannot be Sustained.

This subject embraces the same general principles of law covered by the first, second, third and fourth assignments of error, and covered by "Questions Involved," number 1 and number 2.

Section 60b of the bankrupt act does not provide that a preference shall be *void*, where it is received under circumstances that it may be recovered back, but it provides that "it shall be *voidable*." The statute does not provide that it shall be voidable by creditors or by the court, but it provides that "it shall be voidable by the *trustee*."

(a) The complaint contains no allegation that the trustee elected to avoid the alleged preference by any notice or by making any demand upon the bank for the return of such preference (record 2 to 6).

The bank demurred to this complaint on this ground among others, but its demurrer was overruled. The State Supreme Court in its opinion said:

"It appears from the allegations of the complaint that the mortgaged property had been converted before the commencement of the action, and the proceeds applied upon the mortgage indebtedness of the defendant. The defendant by such conversion put it out of its power to restore the property, and under such circumstances no demand was necessary" (record 446).

In another part of the opinion the court said: "The complaint was in trover, which was proper under the circumstances" (case 454).

A transaction resulting in a voidable preference does not violate any law. The transaction is lawful when

made subject to a possibility of being defeated by subsequent events. It continues to be lawful unless it is followed by an adjudication in bankruptcy within the statutory period. It continues to be lawful after that time unless the trustee elects to avoid it.

A preference is never void, but only voidable, and no one but the trustee can elect to avoid it.

Dyer v. Kratzenstein, 92 N.Y.S. 1012.

Lewis v. First National Bank, 78 Pac. (Ore.) 990.

A creditor by merely receiving the voidable preference does not violate any legal or moral right.

Swarts v. Fourth National Bank, 117 Fed. 1-11.

Swarts v. Frank, (Mo.) 82 S.W. 60.

In *Swarts v. Fourth National Bank*, the court, in an opinion by Judge Sanborn, in speaking of certain payments that constituted a preference, said: "The acceptance of such payments was not forbidden by the moral or by the civil law. The bank did not know and could not foresee that the principal debtor on the note would become a bankrupt within four months from the payments." (117 Fed. 11)

In *Swartz v. Frank*, the court said: "The preferred creditor is not called upon to take the initiative, nor to come into court and offer to surrender his preference and prove up his claim for *non constat* that the trustee will ever attempt to treat it as voidable and to recover it. In short, under the act, the preference stands until attacked by the trustee; hence, the duty of taking the initiative rests upon the trustee and not upon the preferred creditor." 82 S.W. 60.

The creditor receiving the voidable preference is not in default until he fails or refuses to surrender it upon demand being made. Prior to that time his possession is rightful and lawful, and he is not guilty of any wrong, tort or conversion.

A creditor receiving a preference not voidable, is given the right of election by section 57g, either to return what he received and file his claim with other creditors, or else keep what he has received and not file his claim.

Piere v. Chicago Title & Trust Co., 182 U. S. 438.

Where the facts are in dispute as to whether or not a certain transaction constitutes a preference, the creditor receiving the alleged preference is by the bankrupt act necessarily called upon to determine for himself whether he will return what he has received and file his claim with other creditors, or whether he shall litigate that question and attempt to hold what he has received, in which event, in most cases, as in the case at bar, the year allowed by section 57n in which to file claims would expire without his claim being filed.

The bankrupt act therefore contemplates that the trustee shall exercise his election as to whether or not he shall avoid a preference, and it also contemplates that the creditor receiving such alleged preference must exercise an election as to what course he shall take. Until the trustee exercises his election, no cause of action accrues. The creditor is not called upon to elect what course he shall take until the trustee has acted. It therefore follows that the trustee should exercise his election and make his demand before commencing suit. The question is not a mere question of pleading or of state practice, but it goes beyond that, and involves the question of whether the property consisting of the alleged preference is any part of the trust estate, or any part of the property with which the trustee is concerned under the provisions of the bankrupt act prior to the time when the trustee elects to avoid the preference.

That a complaint in such a case is insufficient where it fails to allege such demand and refusal, we cite the following authorities:

Shuman v. Fleckenstein, Fed. Cases No. 12826.
Brooks v. McCracken, Fed. Cases No. 1932.
Lyon v. Clark, 88 N. W. (Mich.) 1046-1047.
Wright v. Skinner, 136 Fed. 694.
Capital National Bank v. Wilkerson, 72 N. E. (Ind.) 247.

(b) No suit was brought to recover the alleged preference received by the bank for which judgment was recovered. (See statement of facts under headings "Sales of Property," "Disposition of Proceeds" and "Items Comprising Judgment"; see also question No. 2 and "How Question Raised.")

The suit was brought to recover the value of logs and lumber. The evidence showed that the bank did not re-

ceive the logs or lumber (record 313, 340, 350.) The trial court held, "The bank received the notes, and not the logs and lumber" (record 399). In reference to questions 4 and 5 of the special verdict, which, when read in connection with the evidence, were ambiguous and meaningless (record 14), the Supreme Court held that "The evidence seems to clearly establish that the Lumber Company purchased the property from Young in the regular course of business, without any understanding with the defendant other than that its interest in the property as mortgagee and claimant, under numerous statutory labor liens, should be recognized, and the equivalent thereof in money delivered to it out of the proceeds" (record 448). The court also said: "The notes were but mere instruments by means of which its interest in the property was transferred to its possession in the form of money" (record 453).

It is therefore established as a verity in the case, that what the bank in fact received consisted of certain promissory notes and a small amount of money for which judgment was rendered (record 457).

The judgment against the bank was rendered on September 18, 1906, more than a year after the adjudication in bankruptcy and after the time had expired in which the bank might have surrendered any preference it may have received, and have filed its claim in the bankruptcy court under sections 57g and 57n of the bankrupt act.

The State Supreme Court was apparently of the opinion that if this was all there was to the case, that the trustee could not recover. The court said, "The very purpose of the action was to recover the value of property, logs and lumber, not notes, wrongfully converted by defendant to its own use. If the reasoning of the learned (trial) court were sound, the suggestion made by counsel for defendant that the action was brought on one theory and went to judgment on another, would not be wholly without merit" (record 449).

The court further said: "The fact is, as it seems, the defendant did in legal effect receive into its possession and convert to its use the property in question to the extent of its chattel mortgage interest" (record 449).

The court further said that it reached the conclusion that

"the legal wrong for which the defendant is liable goes back to the time the chattel mortgages were executed, and goes no further than the interest in the logs and lumber, which in the form of money finally came into its possession. The only direct interest, as appears from the uncontroverted evidence, was represented by the chattel mortgages, certain lien claims acquired by purchase, and a small amount additional that will be referred to specifically hereafter, and which was, as appears, substantially charged to it in the accounting by which the total interest in the property for which defendant was liable was arrived at" (record 447).

This "small amount additional" refers to an excess of $7, as that is the only sum afterwards specially referred to on the subject. The court after referring to this $7 said: "The amount of the judgment as we view the matter is substantially the equivalent of the property which defendant secured by its mortgages. That is, all the property as appears from the record which it obtained in fraud of the bankrupt act" (record 458).

The State Supreme Court was in error in assuming that the bank held a mortgage on the up-river logs. It appeared from the evidence (record 95-96) that there was included in one of the notes for which judgment was rendered, $1335.62 as the net proceeds of the sale of these up-river logs. The same fact appears from certain stipulated facts (record 374-375; see also statement of facts under heading "Up-River Logs").

No fraud in the transactions was either proven or found by the court or jury. It has been frequently held that except in cases of fraud, and except as to the right to recover a preference, that the trustees takes the property of the bankrupt "in the same plight and condition that the bankrupt himself held it, and subject to all the equities imposed upon it in the hands of the bankrupt."

Thompson v. Fairbanks, 196 U. S. 516, 52[illegible]

York Manufacturing Co. v. Cassell, 201 U. S. 344, 352, and cases there cited.

The plight and condition in which the trustee found the logs, the lumber and the chattel mortgages was, they had all gone out of existence so far as the bankrupt

and his estate were concerned. The logs and lumber had been sold by the bankrupt to the Waters-Clark Lumber Company for their full value, paid by that Company in cash or its equivalent. The mortgages were then cancelled, and thereafter ceased to exist as mortgages (record 56, 86). The logs and lumber were again sold to other parties before the adjudiction in bankruptcy (record 43, 44). After the mortgages were cancelled, the bankrupt took lath and shingles that had been covered by the lumber mortgage, which he sold to other parties (record 173, 223, 284). Thus far there was no preference. The sale to the Waters-Clark Lumber Company was not a preference. That company was not a creditor. The mortgages and the liens had all been paid or cancelled before the adjudication in bankruptcy. The portion of the mortgage debt that had been paid, was paid by the bankrupt out of the proceeds of the sale he had made of the property. If there was any preference, it was this payment that constituted the preference. If this preference was voidable, the trustee had the option to avoid it, because the law gave him that right. The trustee did not have the right to change into a preference that which was not preference. The law gave him no such right. The law gave him no right to substitute a fiction for a fact, by assuming that the mortgage was still in existence, and then by recovering judgment for the value of the mortgage lien.

What the bank received was not the equivalent of the mortgage lien. The mortgage covered property—lath and shingles—which was turned back to Young. While, on the other hand, more than half of the logs and more than half of their net proceeds that the bank received, were never included in the mortgages. It is the law and not the trustee that determines what constitutes a preference. The bankrupt act confers upon the trustee no power to determine that question.

If the trustee had brought suit to recover the value of the promissory notes, claiming that as a preference, could the court then hold that he should have brought suit for the value of the logs and lumber? If the trustee had demanded the return of these notes, or had brought suit for

their recovery, the bank could then have exercised its option to return the notes and file its claim in the bankrupt court. By the course that was followed, this right of the bank was denied it, and a judgment taken against it for a different claim than that for which the suit was brought, and for an alleged preference that the trustee never elected to avoid.

That it was the notes, and not the logs and lumber, that constituted the preference, if any preference was given, is also manifest for the following reasons: If the notes constituted the preference, the value of the logs and lumber was not material. If the logs and lumber constituted the preference, the value of the notes was not material. It is the value of that which constitutes the preference, and not the selling price, which fixes the measure of liability of the creditor receiving such preference.

Bankrupt Act, section 60b.

Russell v. Powell, 80 Pac. (Wash.) 837.

On a suit to recover the value of the notes, it would have been no defense, in whole or in part, to show that the bankrupt had made an advantageous sale of the property, that the property was of less value than the notes, or that there was no value in the property over and above the valid statutory liens. On the other hand, if the notes constituted the preference, and they turned out to be worthless on account of the insolvency of the maker, the creditor receiving them (in the absence of fraud) could not be required to pay their full face value.

The trustee takes the estate of the bankrupt in the plight and condition in which he finds it. When he takes from a creditor a preference, he must take that preference in the plight and condition in which the creditor received it, or else its value, which means the value of the preference which the creditor received.

Bankrupt Act, section 60b.

Besides, the transaction was in the nature of an absolute payment or transfer, and not in the nature of a mortgage or other lien. Where the lien has ripened into an absolute title by a sale of the property, the provisions of the bankrupt act relating to liens no longer apply. In such a case the remedy of a trustee, if he has any, is to treat the trans-

action as an absolute payment or transfer, and bring suit therefor under section 60b of the Bankrupt Act.

In re Bailey, 144 Fed. 214.

The suit and the relief demanded, was not of that kind or character which would be brought to set aside a mortgage lien or other lien. Any preference which the bank received and retained was not in the nature of a lien. If the bank merely held a lien, the suit would have been brought to set aside or cancel the lien, or to recover the property free from the lien. Under the bankrupt act, special provision is made by section 67 covering the subject of liens. It is provided by section 67d that liens given in good faith, and for a *present consideration*, etc., are not affected by the act.

Where a mortgage is given in part for a present consideration, and in part for an antecedent debt, it has been frequently held that the mortgage is valid as to the extent of the present conditions but invalid to the extent of the antecedent debt.

City National Bank v. Bruce, 109 Fed. 69.
In re Clifford, 136 Fed. 475.

In such a case the recovery would be of the property, subject to any valid liens existing thereon; but in a case of this kind, where the creditor received an absolute payment, any relief which the trustee could obtain must be under section 60b, under which he recovers the property that the creditor received, or its value.

In Swartz v. Frank, 82 S. W. (Mo.) 60, in a very able and well-considered opinion of the court, it was held that where the trustee waited until after the year had expired in which a creditor might file a claim in the bankruptcy court, before bringing any suit to avoid a preference, that the trustee was estopped by laches from maintaining such suit. The court there, after considering the provisions of the bankrupt act, held that the preference was not void, but voidable; that it was valid until the trustee elected to treat it as void, and that therefore the duty of taking the initiative rested upon the trustee and not upon the preferred creditor. The court said:

"A preferred creditor whose debt has been paid in cash,

or in property, has a right to regard his preference as valid until its validity is challenged by the trustee, and hence he would be very foolish to come into court and surrender his preference, and share with the general creditors before the trustee has taken any steps to have the preference declared invalid."

It therefore follows that the trustee in this case, not having elected to avoid the alleged preference for which the judgment was rendered, and not having brought suit to cover such preference, that the judgment rendered therefor is erroneous, not only as to the $1335.62, the proceeds of the logs upon which the bank never held any mortgage, but also as to the entire amount for which the judgment was recovered.

It was Error to Instruct the Jury that the Creditors were All of the Same Class.

The trial court, in charging the jury in reference to the subject of whether or not it was the intention of the bankrupt to give a preference and as to the meaning of section 60a of the Bankrupt Act, said:

"*So far as creditors' rights are involved in this action, they are all of the same class, by which is meant they would all receive the same percentage on their claims.* Claims for taxes or wages within certain times, so as to be preferred, would be of a different class; *but claims of general creditors, like those proved in the Young bankruptcy proceedings, are all of the same class*" (record 386).

Portions of the charge above quoted that are in italics, were excepted to (record 391, 392). (See assignment of error number 5, also question involved No. 3.)

The evidence showed that certain notes the bank held were secured by indorsement (record 423 to 426). The bank held certain time-checks for labor claims, which were liens on the property (record 374, 375). A large amount of other claims for labor were paid out of the proceeds of the sale (record 374, 375). The evidence shows that these claims were for wages earned by workmen and servants during the previous winter in working on logs and lumber, and that most of the wages were earned within three months prior to the time of the transfers in question (record 205,

211, 259). It also appears that certain claims were filed and allowed in the bankrupt court as preferred claims, which were probably for wages earned after the time of the transfers in question (record 99). Claims for wages were certainly not of the same class as the claims of general unsecured creditors.

In *Doyle v. Milwaukee National Bank*, 116 Fed. 296, it was held that a claim secured by indorsement was not of the same class as an unsecured claim.

The only reasonable or intelligent manner in which the jury could understand this charge was that it was a direct charge to the effect that all creditors whose claims were disclosed by the evidence, whose claims were paid out of the proceeds of the sale, or whose claims were filed as preferred claims or otherwise in the bankruptcy proceeding, were all of the same class; but that claims for taxes and certain other undefined claims for wages not connected with the suit, were of a different class. The charge was clearly erroneous and prejudicial. By the charge the bank was denied its right to have the question at issue passed upon according to law.

Error was assigned in the State Supreme Court to this charge. That court said:

"Error is assigned on the instruction to the effect that all creditors belong to one class. Whether that is right or wrong does not seem to in any way concern the case. This action, as we have indicated, is simply one in trover to recover the value of property which, as is alleged, was in fraud of the bankrupt act wrongfully converted by defendant to its own use. Whether there was one or more classes of creditors and in what manner the property sought to be recovered, would, if the suit were successful, be administered, did not vary in the slightest degree the legal rights of the plaintiff. If the property was obtained by the defendant in fraud of the bankrupt act, the plaintiff was entitled to recover the same, and this is the only question involved" (record 449).

Of course, if the bank is liable for having received a preference, it is not material to it how the money recovered from it shall afterwards be divided between other classes

of creditors; but in order to determine whether or not the bank is liable, it becomes necessary to determine whether or not it has received a preference. By the terms of the bankrupt act it has not received a preference, unless it has by virtue of the transfer in question received a greater percentage of its debt than other creditors of the same class. Bankrupt Act, section 60a.

It has been frequently held that a payment to a creditor who is entitled to priority by reason of having a claim for wages, or by reason of his having some claim placing him in a different class from other creditors, did not constitute a preference. If other creditors are in a subsequent class they are not injured by the transfer, and therefore the enforcement of the transfer does not enable the creditor receiving it to recover a greater percentage of his debt than he is entitled to.

Loveland on Bankruptcy, Second Ed. 587.
Collier on Bankruptcy, Fourth Ed. 422.
In re Henry C. King Co, 113 Fed. 110.
Doyle v. Milwaukee National Bank, 116 Fed. 295.
Easton v. Garrison, 82 S. W. (Tex.) 800.

The definition of the word "preference" in section 60a of the bankrupt act is too plain to admit of any other construction. If it is immaterial whether or not creditors are of the same class, then why are the words "same class" inserted in that section?

The State Supreme Court Erred in its Construction of the Word "Preference."

It was contended on behalf of the bank that on a proper construction of the word "preference" that the evidence was insufficient to sustain the answers to questions 9 and 12 of the special verdict, to the effect that the bank had reasonable cause to believe that a preference was intended (record 15.) In support of this contention it was shown, (1) that by virtue of the transfers in question the bank had collected only 26½ per cent. of its claim; (2) that all the other debts of Young, of which the bank had any notice, which could have been affected by the transfers under any possible view of the evidence, could not exceed $7406.90; (3) that $1962.82 would have been sufficient to enable Young to pay

these other creditors a percentage equal to that received by the bank; and (4) that according to all information the bank had, or could obtain, Young had property left more than sufficient to pay to all these other creditors a percentage equal to that received by the bank. (See statement of facts under headings, "Young's Indebtedness to Bank." See 6th assignment of error and question involved No. 4.)

Either the $4000 worth of good accounts that Young claimed to have (record 209, 210, 330, 331), or the 40 acres of land, wagons, sleighs and camp outfit worth over $2000.00 (record 90, 315, 421), or the $1500 worth of lath and shingles (record 90, 315), together with several carloads of lumber that Young sold after February 1st (record 218 to 223), or the $2000 in cash that he claimed to have in his pocket (record 87), would have been amply sufficient to pay these other creditors a greater percentage than that collected by the bank.

It was also contended that on such state of facts the bank had not received a preference (record 456).

If, on a proper construction of the bankrupt act, the evidence was insufficient to sustain the finding of the jury, it would have been the clear duty, as well as the uniform practice in such cases, for the State Supreme Court to have set aside the finding of the jury.

Stafford v. Chippewa Valley Electric Railroad Company, 110 Wis. 331, 361, and cases there cited.

The State Supreme Court held that the evidence was sufficient to prove that Young was insolvent, and also to prove that the bank was chargeable with notice thereof. (See opinion of court and evidence referred to, record 454, 455.) The court held that because the evidence was sufficient to prove that Young was insolvent, and that the bank was chargeable with notice of such insolvency, that the conclusion followed that the evidence was sufficient to prove that the bank was chargeable with notice that a preference was intended (record 456).

An examination of the court's opinion will show that this is the only fair or reasonable construction that can be given to the opinion. If the opinion is examined in the light of the evidence to which it refers, then it is very clear that the

question of the sufficiency of the evidence to sustain these findings depends entirely upon whether or not the State Supreme Court placed a proper construction upon the meaning of the word "preference." The construction which the court placed upon the statute appears from the following portion of the opinion: "It is claimed, however, by counsel for defendant, that unless the enforcement of the mortgages would operate to give defendant a greater percentage of its debt than other creditors of the same class would receive, that the mortgages did not amount to a conveyance of property, or in other words, a preference, within the meaning of the bankrupt act. We do not so understand the law. The Federal statute renders void any preference given under the circumstances specified therein, and, as we have seen, gives the trustee in bankruptcy the right to recover any property, or its value, conveyed in violation of such act. Manifestly, if a creditor receives security for the payment of his claim, and that is followed within four months by the commencement of proceedings in bankruptcy against or on the part of the debtor, the intention of such security being to give the favored creditor a preference (the having knowledge or reasonable means of knowledge thereof), and yet have the same standing as other creditors for the balance of his claim, as he would have if the transaction were valid, the effect would necessarily be to give such creditor an undue advantage, a preference within the meaning of the bankrupt act. That is too clear to admit of a reasonable controversy. Toof et al. v. Martin, 13 Wall. 40" (record 456).

The question presented to this Court on this writ of error is, Did the Supreme Court, in deciding the question of fact, place an improper construction upon this Federal statute? If it did, then the bank has been denied a right and immunity which it specially set up and relied upon under this Federal statute which was decided against it in the state court. Unless this Court can give it relief in such a case, then, although it may not be liable either under the facts or under the law, it will be deprived of its property by the judgment rendered, with no court to give it relief. It is a self-evident proposition, that the bank did not have a reasonable cause to believe that a preference was intended, if all the facts and circumstances that it

knew and with which it was chargeable with knowledge did not in the law constitute a preference.

By the terms of the bankrupt act a transaction does not constitute a preference unless the enforcement of the transfer (whether by sale, payment or mortgage) has the effect to enable one creditor to obtain a greater percentage of his debt than other creditors of the same class.

Section 60a of the bankrupt act, so far as it applies to this question, reads as follows:

"A person shall be deemed to have given a preference if, being insolvent, he has * * made a transfer of any of his property, and the effect of the enforcement of such * * transfer will be to enable one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class."

By the terms of the statute it is not sufficient that the debtor be insolvent, and that some transfers or payment be made to a creditor, but the transfer or payment to the creditor must be sufficient in amount to constitute a "greater percentage." The "greater percentage" must be the effect of the enforcement of the transfer.

The words are plain that "the effect of the enforcement of the transfer *will be* to enable one of his creditors to obtain a greater percentage," etc. It does not say that the transfer is a preference, if that result *may* follow, but only when that result *will* follow as the effect of the transfer. It is impossible to construe the statute as construed by the state court without changing the language of the statute. As the statute is construed by the state court, the words, "and the effect of the enforcement of such transfer will be," etc., must be changed so as to read, "and the *combined* effect of the enforcement of such transfer, *together with a collection of the balance of the claim with other creditors in a subsequent bankrupt may be*," etc., or, to meet that court's construction, the clause in question must be changed so as to read, "and the effect of the enforcement of the transfer will be to enable any one of his creditors to obtain any percentage of his debt." Besides, as the act was construed, it is necessary to

strike out entirely the words, "any other of such creditors of the same class," because the court has held that it in no way concerns the bank, whether or not creditors are all of one class.

No authority is cited in the court's opinion to sustain its construction, except that of *Toof et al. v. Martin*, 13 Wallace, 40. That case was decided under section 35 of the bankrupt act of 1867, which covered the same general subject as section 60 of the bankrupt act of 1898. Section 35 of the bankrupt act of 1867 did not contain any provision in reference to the percentage of the claim collected by reason of the transfer, but provided in substance that if a person, being insolvent, makes any payment or transfer to a creditor, such creditor "having reasonable cause to believe such person *insolvent*," that the transaction should be void.

It is not the policy of the bankrupt act of 1898 to make it the duty of all insolvent persons to be adjudged bankrupts. Only certain persons may become voluntary bankrupts, and only certain persons may be adjudged involuntary bankrupts.

Bankrupt Act, section 4.

Many insolvent persons succeed in paying their debts. It is only when an unfair and unequal distribution of the insolvent's property, is made between his creditors, that such distribution becomes a preference. If an insolvent person makes an equitable division of his property among his creditors, it is much better, both for the debtor and the creditors, that this be done without any bankruptcy proceedings.

From the nature of business, absolute equality of distribution is impossible. It is necessary, in order that business interests be not unduly disturbed, that a time limit of four months, or some other reasonable time, be established, beyond which the transactions cannot be set aside as preferences. The result is that creditors who collect their claims beyond a time limit secure an advantage over other creditors. Creditors who collect their claims, or portions of their claims, within the four months, without being chargeable with notice that a preference was intended, also secure an advantage over other creditors. It was the intention of

congress, in order not to disturb fair business transactions, that such advantage should not be disturbed. The intention of congress is carried out further along this line by the amendment in 1903 to section 57g, which permits a creditor who receives a preference not voidable under section 60b to retain the preference and collect the balance of his claim out of the bankrupt's estate. These considerations show that when congress provided by section 60a that in order to constitute a preference, the effect of the enforcement of the transfer must be to secure to the creditor receiving it a greater percentage of his debt than other creditors of the same class, that it was the intention that this provision should mean just what it said, and that it should not be extended by construction to include other transactions not coming within the provisions of the act.

In *New York County National Bank v. Massey*, 192 U. S. 138, where a bank applied upon its claim against an insolvent debtor money on deposit in the bank, the court held that the transaction did not constitute a preference. It was held that, although the transaction gave the creditor an advantage over other creditors, that it did not constitute a preference within the meaning of the bankrupt act, because "this indirect result is not brought about by the transfer of the property within the meaning of the law."

The authorities are numerous to the effect that a payment or transfer by an insolvent debtor does not constitute a preference, unless it has the effect to enable one creditor to obtain a greater percentage of his debt than other creditors of the same class.

In re Henry C. King Co., 113 Fed. 110.
Swarts v. Fourth National Bank, 117 Fed. 1-4.
Loveland on Bankruptcy, Second Ed. 572, 577.
Collier on Bankruptcy, Fourth Ed. 422.
Christoferson v. Oleson, 102 N. W. (S. D.) 685.
Sellers v. Hayes, 163 Ind. 422; 72 S. E. 119.
Peterson v. Nash Bros., 112 Fed. 311.
Hastings v. Tithian, 60 Atl. (N. J.) 350.

In *Peterson v. Nash Brothers*, 112 Fed, 311-314, the court in speaking of section 60a said: "This provision it seems

does not make the transfer of property (which includes the payment of money) by an insolvent debtor in and of itself a preference. It must be so done that the effect of the transfer will be to enable one creditor to obtain a greater percentage of his debt than any other creditor of the same class".

In *re Henry C. King Co.*, 113 Fed. 110-111, the court said: "The bankrupt act does not provide that any payment received by the creditor from the bankrupt within four months is a preference, but only when the effect of this payment, 'will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of his creditors of the same class.' If this is not the effect of the payment there is no preference."

The court further said: "Bankrupt Act, section 60b, does not provide that the trustee may recover all payments received with knowledge of insolvency, but only preferences so received. This seems to be the inevitable result of *Dickson v. Wyman*, combined with *Piere v. Trust Co.* I must hold therefore that knowledge of insolvency did not make a preference of acts which otherwise did not amount to a preference."

In *Swarts v. Fourth National Bank*, 117 Fed. 1-4, the court said: "The test of a preference under the act is the payment out of the bankrupt's property of the larger percentage of the creditors' claim than other creditors of the same class receive, and not the benefit or injury to the creditor preferred."

In *Loveland on Bankruptcy*, on page 577, the author, in discussing what is reasonable cause to believe that a preference was intended, said: "This phrase undoubtedly includes reasonable cause to believe that the debtor is insolvent, for this is one of the elements of a preference. It also includes a reasonable cause to believe that he is to obtain a greater percentage of his debt than any other creditor in his class, for this is another element of a preference."

In *Christoferson v. Oleson*, (S. D.) 102 N. W. 685, the court, in considering the question of what constitutes a voidable preference, said: "In other words, when a bankrupt who is insolvent, conveys to a creditor *more than his proportion of*

his property, and the creditor so receiving such transfer or to be benefitted thereby shall have reasonable cause to believe that it was thereby intended to give him a preference, such transfer is void if made within four months of the adjudication, or declaration that he is a bankrupt". (686.)

The Trustee Represents Creditors who are Entitled to Participate in the Distribution of the Bankrupt Estate, and No Recovery Can be had Except for their Benefit.

This proposition involves the questions raised by the first, seventh, eighth and ninth assignments of error, and by question involved No. 5. See also statement of facts under headings, "Young's Indebtedness to Other Creditors" and "Illegal Preferences Collected by Other Creditors."

(a) If the trustee can maintain the suit only on behalf of creditors whose claims are administered in the bankrupt proceeding, the complaint fails to state a cause of action, and the demurrer thereto should have been sustained. The complaint contains no allegation that the claim of any creditor was filed in the bankrupt court.

The State Supreme Court in passing on this question held that under section 60 of the bankrupt act that it was not necessary to allege that any claim had been filed in the bankruptcy proceeding, or any fact showing the necessity of recovering the alleged preference to pay claims of creditors; that where the preference was voidable, the trustee has the absolute right to recover the value of the property without any condition or exception (record 446).

In a suit by a trustee in bankruptcy to recover an alleged preference, the complaint is insufficient when it fails to allege that claims of creditors have been filed in the bankruptcy proceeding.

Roney v. Conable, 101 N. W. (Ia.) 505.
Crary v. Kurtz, 105 N. W. (Ia.) 590-591.
Lesser v. Bradford, 95 N. Y. S. 933.
Mueller v. Bruss, 112 Wis. 406.

In the case at bar the State Supreme Court distinguished the case from the decision in *Mueller v. Bruss*, on the ground that in *Mueller v. Bruss* the suit was brought to set aside a fraudulent conveyance, while in the case

at bar the suit was brought to recover a preference. We think that no such distinction is justified by any provision of the bankrupt act, and that if the trustee represents creditors in the one case, he also represents creditors in the other. We fail to see how the existence of actual fraud on the part of the creditor receiving the conveyance would increase his rights.

(b) If the trustee bringing this suit represents creditors, and if his recovery is limited to such sum as is necessary to pay in full the claims of such persons as the evidence in this suit shows were creditors whose claims were proven and entitled to be proven in the bankrupt court, then no recovery can be justified in excess of $2667.04 (see statement of facts under headings, "Young's Indebtedness to other Creditors." and "Illegal Preferences Collected by Other Creditors").

The evidence shows that the claims of all creditors who could in any manner be affected by the alleged preference, whose claims were filed in the bankruptcy proceeding, amounted to $8322.18 (record 98, 99 and 144 to 148).

The record also shows that two of these creditors, Sallie F. Moon and W. S. Monroe, whose claims amounted to $5655.14, had themselves received preferences. Deducting this sum of $5655.14 from $8322.18, leaves $2667.04.

The bankrupt act prohibits the filing or allowance of claims of persons who received and failed to return preferences.

Bankrupt Act, section 57g.

Piere v. Trust Company, 182 U. S. 438.

In a suit of this kind the burden is upon the trustee to prove his case, which necessarily means both the question of his right to recover and the question of the amount of his recovery.

Evidence was offered to prove what debts the bankrupt was owing on Feb. 20, 1902 (record 144 to 148). The evidence also shows that he was owing substanially the same debts on March 29, 1902 (record 210, 211). There is no evidence to show what debts he was owing at any subsequent date. Certain claims were filed and allowed in the bankruptcy preceeding (record 98, 99) not included in the amount

above mentioned of $8322.18. No evidence was offered to prove that the bankrupt ever owed any of these other debts.

Ex parte affidavits filed in the bankrupt court were no proof in this suit against the bank of the existence of any such indebtedness.

Halbert v. Pranke, (Minn.) 97 N. W. 976.

Besides, when this proof was offered it was expressly stated by counsel for the trustee that it was not offered for the purpose of proving the existence of any such alleged indebtedness, but merely for the purpose of proving that certain claims were filed (record 263).

In a suit by a trustee against a creditor to recover an alleged preference, the creditor is entitled to have the suit decided upon evidence adduced on the trial in that suit, and is not bound by any judgment or decision that may have been rendered in the bankrupt court, either as to a question of preference, a question of insolvency, or any other material question in the case.

Buder v. Columbia Distilling Co., 70 S. W. 508.
John Silvey & Co. v. Taft, 123 Ga. 804; 51 S. E. 748.
Loveland on Bankruptcy, Second Ed. 609.

It is elementary that where a party is sued there he has a right to defend. His right to defend involves the right to defend, not only as to the question of his liability, but also the question of the amount of that liability. That right cannot be taken from him by any proceeding in another court, where he was not a party and where he was not represented.

The question of the amount of the claims of creditors was not found in the state court by either the court or jury. The State Supreme Court refused to consider the question on the ground that under the bankrupt act a creditor receiving a voidable preference was absolutely liable for its entire value, and that therefore the amount of creditors' claims was immaterial.

The claims filed in excess of $8322.18 are therefore unsupported by any evidence, or by any finding or decision in the state court. The claim of one of the creditors who received a preference, which claim was filed in the bankrupt court, shows on its face the fact that, nowith-

standing the creditor had no security, the bankrupt had paid on the claim $1059.86 within four months before the adjudication in bankruptcy, which sum was credited on the claim, instead of being surrendered as the bankrupt act provided (record 264). This claim was not entitled to be so filed under the law.

Western Tie & Timber Co. v. Brown, 196 U. S. 500, 510.

As the claim is not by law entitled to be filed in the bankrupt court, the trustee under the law has no right in this suit to sue or recover for the benefit of such creditor.

Under the bankrupt act one creditor who receives and retains a preference has no standing in court to keep that preference and also by the assistance of the trustee to require another creditor who has received a similar preference to pay the balance of the claim. If this judgment is sustained that will be the result.

Under the bankrupt law the bank is not liable for the claim of Sallie F. Moon. It appears from the certificate of the Chief Justice of the State Supreme Court, that in the decision of the case these questions were raised and presented to the court, and by it decided adversely to the plaintiff in error (record 466, 467).

The fact that the State Supreme Court in its decision found it necessary, as the Chief Justice certifies, to decide these questions adversely to the bank, necessarily means that the decision of the State Supreme Court is based upon its decision of these questions.

We think that on principle and authority a trustee, in order to recover a voidable preference, must be required to established, not only that the transaction constituted a voidable preference, but also the following facts:

First—That other creditors of the bankrupt in fact existed;

Second—That such creditors have filed claims in the bankrupt court;

Third—That the claims of such creditors were such that under the bankrupt law they were entitled to be so filed.

The trustee ought not to be permitted to recover anything for the payment of any claim that fails to comply with any one of the above three requirements. Any additional amount recovered is in the nature of a penalty or forfeiture.

Claims of persons not proven to be creditors are necessarily fictitious claims. It cannot be the duty of the defendant in such a suit to prove that A, B or C is not a cerditor, when no proof is offered and no claim made that such person is a creditor.

A transfer by an insolvent debtor to a creditor is not a preference unless it appears that the debtor had other creditors existing at the time of the transfer.

Brake v. Callison, 129 Fed. 201.

A trustee in bankruptcy is the trustee for the creditors, and represents general creditors who are entitled to participate in the bankrupt estate.

Dudley v. Easton, 104 U. S. 99.

The fact that a trustee represents creditors, and sues in their behalf, is manifest from the nature of the proceeding. He is elected by the creditors. In recovering the assets of the estate he occupies a similar position to that of a receiver, an assignee for the benefit of creditors, an executor or an administrator. It is elementary that in suits by such other officers to recover property conveyed in violation of the rights of creditors, that the recovery is limited to what is necessary to pay the claims of creditors. That the trustee occupies the same position is implied by his name. In such a suit for whom is he trustee unless it be for creditors? Can he recover a preference not needed to pay debts, but only for the purpose of returning it to the bankrupt after the debts are paid under section 66b of the bankrupt act? He cannot recover anything in his own behalf, and for his own benefit. Unless he is trustee for the creditors, for whom is he trustee? Can there be a trustee without a *cestui que trust?*

The State Supreme Court held that the right to recover was not limited to what was necessary to pay creditors, because section 60b did not in terms so provide.

As said by other courts, "Notwithstanding any provisions which are found in the bankruptcy act relative to the right of the trustee to avoid particular transactions of the debtor, yet the whole act must be read in the light of the predominating purpose of congress with reference to the distribution of the assets, namely, to prevent any inequality of payment among the unsecured creditors."

Sellers v. Hayes, 72 N. E. (Ind.) 119-122.

It is elementary in the construction of statutes that they should be construed according to the intent for which the statute was enacted, and that no construction which would lead to unreasonable or ridiculous results will be adopted, if any other reasonable construction is possible.

An illustration will show what would be possible under the construction adopted by the State Supreme Court. Suppose an insolvent person had property worth $75,000 and owed debts to the amount of $100,000; that he owed one creditor $99,000, and owed ten other creditors $100 each? He pays his largest creditor $70,000. The creditor knows that he is insolvent, but also knows that he has $5000 left, which is more than sufficient to pay his other ten creditors the $1000 he owes. He files a petition in bankruptcy. His trustee sues and recovers the $70,000 from the preferred creditor. In the meantime the bankrupt is discharged from his debts, and the time has expired for the preferred creditor to file his claim in the bankruptcy court. The other creditors are paid out of the $5000 the bankrupt had left, and the balance, including the $70,000, is returned to the bankrupt; or, suppose we change the situation a little, to make it more like the case at bar. Suppose the trustee, instead of suing to recover the preference of $70,000, brings suit to recover a much larger sum which he alleges was the value of logs and lumber sold to the creditor, but which in fact was never sold to nor received by the creditor, and suppose that after the year expired for that creditor to file his claim, and at a time when the trustee had not yet elected to avoid any actual preference that was received, the trustee is permitted in that suit to recover a judgment, not for what he sued for, but for the $70,000, which, when recovered, must be returned to the bankrupt. In both such cases the bankrupt would have all his debts discharged, and would have made a very handsome profit out of the transaction.

We think that a construction of the bankrupt act which would make such a result possible is an unreasonable construction, and cannot be sustained.

We think in the supposed case that the creditor receiving

the $70,000 is not liable at all; first, because the transaction is not a preference, as the creditor did not receive more than his just proportion; second, because the trustee did not elect to avoid, and did not bring suit to recover, the alleged preference that the creditor received, and third, because the recovery was not necessary to pay the bankrupt's debts.

We therefore respectfully submit that an examination of the record in this case discloses that in the decision of this suit in the state court, an entirely erroneus construction was placed upon the provisions of the bankrupt act in many material particulars, that the rights to which the plaintiff in error was entitled under that law were denied it, and that the judgment should be reversed.

Respectfully submitted,

BURR W. JONES,
JAMES WICKHAM,
FRANK R. FARR,
Counsel for Plaintiff in Error.

FILE COPY.

No. [redacted]163

IN UNITED STATES

SUPREME COURT

FILED
FEB 8 1906

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt,

Defendant in Error

vs.

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error

On Writ of Error to the Supreme Court of the State of Wisconsin

BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS WRIT

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Attorneys for Defendant in Error.

IN UNITED STATES SUPREME COURT

RALPH W. JACKMAN, Trustee of the Estate of John H. Young, a Bankrupt,

Defendant in Error

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Plaintiff in Error

BRIEF OF DEFENDANT IN ERROR ON MOTION TO DISMISS WRIT

NATURE OF ACTION.

This was an action brought by defendant in error against the plaintiff in error under Sec. 60 b, Bank-Act, 1898, to recover property, or the value thereof, which was transferred by the bankrupt to plaintiff in error, for the purpose of giving it a preference over other creditors, which preference was received by the plaintiff in error with knowledge that such transfer was made for the purpose of giving it such preference.

HISTORY OF ACTION.

This action was commenced by the trustee in the Circuit Court of Eau Claire County, prior to the amendment of Feb. 5, 1903, giving Federal Court jurisdiction of such action, and resulted in a judgment in

favor of the trustee and against the bank for $6,843.77, damages and costs. (p. 26 record). On appeal to the Supreme Court of the State of Wisconsin this judgment was affirmed. (See mandate in record). This writ of error is brought to reverse such judgment of the Supreme Court of the State of Wisconsin.

ISSUES MADE BY PLEADINGS.

The complaint of the Trustee alleged in substance, that on June 7th, 1902, the bankrupt Young filed his petition in the bankruptcy court for the Western District of Wisconsin, and was on that day adjudged a bankrupt; that the Trustee qualified as required by law; that within four months immediately preceding the filing of the petition, the bankrupt was in possession of certain lumber, shingles and lath, located at Cadott, and certain other logs located on the Yellow River, spoken of as the up-river logs, the value of all of which amounted to $35,000; that on February 10th, 1902, the bankrupt was wholly insolvent, which fact was known to the plaintiff in error; that on that day the bankrupt was indebted to the bank in the sum of $27,000; that on February 10th, 1902, while insolvent, the bankrupt executed to the plaintiff in error a chattel mortgage on certain sawlogs, to secure a note of $15,900, and on the same day executed a second chattel mortgage to plaintiff in error, transferring certain lumber, lath and shingles as security to a second note of $11,100; that the indebtedness evidenced by said notes accrued long prior to that date; that the property so transferred constituted substantially all of the property owned by the bankrupt; that the effect of the enforcement and foreclosure of said mortgages will be to enable the plaintiff in error to obtain a much larger percentage

of its debt than will the other creditors of said Young in the same class as plaintiff in error; that said mortgages were given by the bankrupt and received by plaintiff in error for the purpose of hindering and delaying the other creditors of the bankrupt, and that at the time they were received, the plaintiff in error had reasonable cause to believe that the same were given with the intention of giving it a preference, and that the plaintiff in error well knew that such mortgages were executed for the sole purpose of giving such preference.

The complaint further alleges that the Waters-Clark Lumber Company was a corporation, whose president was a director of the bank; that after the execution of said mortgages and on or about March 10th, 1902, the cashier of the bank requested the bankrupt to transfer the mortgaged property to the Waters-Clark Lumber Company, and that such transfer was made on March 10th, 1902, pursuant to such request; that such transfer was made by absolute bill of sale of all of the property mentioned in the chattel mortgages, together with other saw-logs, known as the up-river logs; that immediately thereafter the Waters-Clark Lumber Company, acting pursuant to the directions of the defendant bank, took possession of all the property and sold the same and applied the proceeds to the payment of the indebtedness secured by said mortgages; that at the time of making said bills of sale, the Waters-Clark Lumber Company and the defendant bank, their officers and agents, knew that the property so transferred constituted all of the available assets of said Young, and that as a result the other creditors would lose all of their indebtedness; that no consideration was paid by said Waters-Clark

Lumber Company to said Young for the property so transferred; that by reason of the collusive arrangement and agreement aforesaid, and by means of the said two chattel mortgages and bills of sale, the defendant bank, within four months prior to June 7th, 1902, appropriated to the payment of its indebtedness, substantially all of the property of the bankrupt, which property was worth the sum of $35,000; that there was no other property in the possession of plaintiff as Trustee, out of which the other creditors of Young can be paid, and that it is necessary, to enable defendant in error to pay anything to the other creditors, to recover from said defendant bank the value of the property so by it appropriated by means of said transfers. (p. 1-10 Record).

The defendant by answer admits the filing of the petition, and the appointment and qualification of plaintiff as trustee; admits the execution of the two mortgages of February 10th; admits that the president of the Waters-Clark Lumber Company was a director of the defendant bank; admits that in March, 1902, the bankrupt sold to the Waters-Clark Lumber Company certain logs covered by one of said mortgages, and certain other logs, and admits that a portion of the proceeds of said sale was paid to the defendant bank to discharge valid and existing liens it held against the property.

The answer further alleges that the mortgages were given for a good and valuable consideration, and alleges that neither of the mortgages, nor the payments made to the defendant bank, were made, given or received for the purpose of giving it a preference over other creditors of Young, contrary to the provisions of the bankruptcy act. (p. 11-12 Record).

VERDICT OF JURY.

The jury by special verdict found:

FIRST. That on February 20th, when the mortgages were given, on March 3rd, when a bill of sale was given to the Waters-Clark Lumber Company for the lumber, and again on March 29th, 1902, when the bill of sale was given to the Lumber Company for the logs, the property of Young, at a fair valuation, was not sufficient in amount to pay his debts.

SECOND: That Waters-Clark Lumber Company acted for the bank and pursuant to an arrangement between it, the bank, and the bankrupt, in taking legal title to the lumber and logs in question.

THIRD: That it was the intention of the bankrupt, by executing the chattel mortgages, transferring the lumber and transferring the logs by bill of sale, to give to the plaintiff in error a preference.

FOURTH: That at the time of accepting the chattel mortgages and at the time of causing the lumber and logs to be transferred to the Waters-Clark Lumber Company, the plaintiff in error and its officers and agents, had reasonable cause to believe that the bankrupt intended by such transfers to give it a preference. (See verdict, pp. 14-17 Record.)

By stipulation the value of the property was left for the court to fix, and such values were not submitted to the jury. The court made findings, fixing values, upon which the judgment was entered. (See Findings, p. 20 Record).

JUDGMENT.

The judgment entered by the Circuit Court in Wisconsin and affirmed by the Supreme Court, was for the net amount realized by plaintiff in error from the proceeds of the logs and lumber in question, after

paying time orders or time checks for amounts due to laborers, which under the Wisconsin statute might or would have become liens by filing the proper petition. The plaintiff in error held most of these time checks.

AUTHORITIES.

To give the supreme court jurisdiction it must appear by the record that a federal question is involved.

Zadig vs. Baldwin, 166 U. S. 485.

Citizens Bank vs. Owensboro, 173 U. S. 636.

Dewey vs. Des Moines, 173 U. S. 193, 198.

Oxley Stove Company vs. Butler County, 166 U. S. 648, 654.

In Oxley Stove Co. vs. Butler County, supra, the court said that the words "specially set up or claimed" in section 709 of the Revised statutes "were inserted in order that the revisory power of the supreme court should not extend to rights denied by the final judgment of the highest court of a state unless the party claiming such rights plainly and distinctly indicated, before the state court disposed of the case, that they were claimed under the constitution, treaties or statutes of the United States. The words 'specially set up or claimed' imply that if a party intends to invoke for the protection of his rights, the constitution of the United States or some treaty, statute commission or authority of the United States he must so declare; and unless he does so declare 'specially,' that is, unmistakably this court is without authority to reexamine the final judgment of the state court. This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a federal right is left to mere inference. * * Upon like grounds the jurisdiction

of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right." The writ of error was dismissed.

In Dewey vs. Des Moines, supra, the court said: "Although no particular form of words is necessary to be used in order that the Federal question may be said to be involved, within the meaning of the cases on this subject, there yet must be something in the case before the state court which at least would call its attention to the Federal question as one that was relied on by the party, and then, if the decision of the court, while not noticing the question, was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. *It must appear from the record that the right set up or claimed was denied by the judgment or that such was its necessary effect in law.*"

In order to bring a case from the state court to the United States Supreme Court for review, it is necessary that the record should show that the point giving jurisdiction was raised and decided in the court below.

Detroit City Railway Co. vs. Guthard, 114 U. S. 133.

Bolln vs. Nebraska, 176 U. S. 83, 91.

Loeber vs. Schroeder, 149 U. S. 580.

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In Choteau vs. Gibson, supra, the court said: "From the beginning it has been held that, to give us

jurisdiction in this class of cases, it must appear affirmatively on the face of the record, not only that a federal question was raised and presented to the highest court of the state for decision, but that it was decided or that its decision was necessary to the judgment or decree rendered in the case."

In Detroit City Railway Co. vs. Guthard, supra, the court said: "the reason of the rule is obvious. Our jurisdiction for the review of a judgment of the highest court of a state depends on the decision by that court of one or more of the questions specified in section 709 Revised Statutes and in the way there mentioned. If there has been no such decision in the suit there can be no reexamination of the judgment here. It is what was actually decided that we are to consider, not what might have been decided; and, as our jurisdiction must appear affirmatively on the face of the record before we can proceed, the record must show either in express terms or by fair implication, not only the question but its decision. It is not enough to find by searching after judgment, that the requisite question might have been raised and presented for decision. It must appear that is was actually raised and actually decided." Motion to dismiss was granted.

In Hagar vs. California, supra, the court held that error will not lie to a state court unless a federal question was actually raised and decided or necessarily involved in the judgment. It is not enough that a federal question might have been raised.

Where it does not appear in any part of the record that any federal question was actually presented for consideration, or in any way relied on, in the state court, before the final judgment from which

the writ of error, has been taken, the fact that, after the final judgment and in the petition for a writ of error, a federal question was presented, will not give the supreme court jurisdiction and the writ will be dismissed.

Johnson vs. New York Life Insurance Co., 187 U. S. 491.

Simmermann vs. Nebraska, 116 U. S. 54.

In Johnson vs. New York Life Insurance Co., supra, the court said: "Conceding that it was unnecessary to set it up in any pleading anterior to the trial since it could not be claimed that the right had been denied to her until the trial took place, it was clearly her duty to make the claim either on the motion for a new trial, or in the assignments of error filed in the supreme court of the state. In neither does it appear, nor is there any allusion to it in the opinion of the supreme court. It first appears in the petition for a writ of error from this court. This is clearly insufficient."

A federal question cannot be raised for the first time by a petition for rehearing after judgment in the highest court of the state, so as to bring the case within the appellate jurisdiction of the United States supreme court.

Capital National Bank vs. First National Bank, 172 U. S. 425.

Miller vs. Cincinnati R. Co. 168 U. S. 131.

Sayward vs. Denny 158 U. S. 180.

Loeber vs. Schroeder 149 U. S. 580.

In Loeber vs. Schroeder, the court said: "It is also well settled by the decisions of this court that the attempt to raise for the first time a Federal question, in a petition for rehearing after judgment comes

too late."

To give the supreme court jurisdiction it must appear that the plaintiff in error set up and claimed some right privilege or immunity under a federal statute, and that such right privilege, or immunity was denied by the judgment of the state court sought to be reviewed.

Home for Incurables vs. City New York, 187 U. S. 155.

Dewey vs. Des Moines, 173 U. S. 193, 200.

Sayward vs. Denny, 158 U. S. 180.

Smith vs. Adsit, 16 Wall 185.

Farney vs. Towle, 1 Black 262.

In Sayward vs. Denny, supra, the court said: "As the validity of no treaty or statute of, or authority exercised under, the United States, nor of a statute of, or authority exercised under, any state, was drawn in question, it is essential to the maintenance of our jurisdiction that it should appear that some title right, privilege or immunity under the constitution or laws of the United States was specially set up or claimed in the state court, and that the decision of highest court of the state, in which such decision could be had, was against the title, right, privilege or immunity so set up or claimed."

In Dewey vs. Des Moines, supra, the court said: "In order to be available in this court some claim or right must have been asserted in the court below by which it would appear that the party asserting the right founded it in some degree upon the constitution or laws or treaties of the United States. In such case, if the court below denied the right claimed it would be enough; or if it did not in terms deny such right, if the necessary effect of its judgment was to

deny it, then it would be enough. But the denial whether express or implied, must be of some right or claim founded upon the constitution or the laws or treaties of the United States which had in some manner been brought to the attention of the court below. A claim or right which has never been made or asserted cannot be said to have been denied by a judgment which does not refer to it. A point that was never raised cannot be said to have been decided adversely to a party, who never set it up or in any way alluded to it. Nor can it be said that the necessary effect in law of a judgment, which is silent upon the question, is the denial of a claim or right which might have been involved therein, but which in fact was never in any way set up or spoken of."

The title, right, privilege or immunity claimed must be personal to the plaintiff in error. He is not entitled to review where the title, right, privilege or immunity was asserted by the other party, and the decision was in favor of that party and adverse to himself.

De Lamar's Nevada Gold Mining Co. vs. Nesbitt, 177 U. S. 523.

Texas & Pacific Ry. Co. vs. Johnson, 151 U. S. 81.

Kizer vs. Texarkana & Fort Smith Ry. Co. 179 U. S. 199.

Missouri vs. Adriano, 138 U. S. 496.

In Missouri vs. Adriano, supra, the court said: "Here is clearly a right or privilege claimed by respondent under a statute of the United States within the meaning of revised statutes section 709, and had the judgment of the Supreme Court of Missouri been adverse to his claim, there could be no doubt of his right to a writ of error from this court to review its

ruling. It is insisted, however, that the relator has no right to a review of the ruling in favor of respondent, as he claimed no right or privilege, personal to himself, or to his own status as a citizen, from such statute. The question thus presented is, whether the right or privilege must necessarily be personal to the plaintiff in error, or whether he is not entitled to a review where such right or privilege is asserted by his opponent, and the decision is in favor of such opponent and adverse to himself. While there is some force in the argument that the right of review in cases involving the construction of a federal statute, should be mutual, the act limits such right to cases where the state court has decided against the title, right, privilege or immunity set up or claimed under the statute."

In Kizer vs. Texarkana & Fort Smith Ry. Co., supra, the court said: "He now says that, although he set up no claim of any title, right, privilege or immunity, under the act of Congress, yet the claim which defendant specially set up under it was acknowledged and enforced by the state court, and the statute was thus construed unfavorably as to him, and that he has, therefore, a right to have the judgment of the state court, which was based on such construction, reviewed here, under section 709 of the Revised Statutes of the United States. But that section provides, so far as here applicable, that when any right, title, privilege or immunity is claimed under a statute of the United States, and the decision of the state court is against the title, right, etc., specially set up or claimed under such statute, then and in such case the judgment of the state court may be reviewed by this court.

Here, the claim under the federal statute has been allowed by the state court, and the contract sued on by the plaintiff in error has been denied validity because of its violation of that statute. It is not every case where a federal statute has been construed by a state court that gives a right of review to this court, but the claim of any right, title, privilege or immunity under the statute must have been denied by the state tribunal in order to give us jurisdiction to review its judgment. That a federal statute was construed unfavorably to one of the parties to the suit is no ground for jurisdiction by this court, unless such construction was not only unfavorable, but was against the right, title, etc., specially set up and claimed under the statute. In that case the party setting up and claiming the right under the statute, which has been denied, can obtain a review here. Thus it might happen, as it has happened in this case, that, while the decision upon the construction of the statute was unfavorable to the maintenance of the cause of action set forth by the plaintiff in error, it was not against, but in favor of, the claim made under the federal statute."

Mere questions of fact present no federal question and the findings of the jury are verities in this court.

Smiley vs. Kansas, 196 U. S. 447.

Kaufman vs. Tredway, 195 U. S. 271.

Dower vs. Richards, 151 U. S. 658.

Western Union vs. Call Publishing Co., 181 U. S. 92.

In Smiley vs. Kansas, the court said: "The verdict of the jury settles all questions of fact."

In Dower vs. Richards the court said: "That this

court, in an action at law, at least, has no jurisdiction to review the decision of the highest court of a state upon a pure question of fact, although a federal question would or would not be presented according to the way in which the question of fact was decided, is clearly settled * * *"

In Kaufman vs. Tredway 196 U. S. 447, the court held that whether a bankrupt was insolvent at the time of giving the alleged preference, and whether the creditor had reasonable cause to believe that it was intended thereby to give a preference are questions of fact as to which the supreme court of the United States is concluded by the verdict of the jury in a suit by the trustee to recover the amount of the preference.

In Thompson vs. Fairbanks 196 U. S. 516, 523, the court said: "The question whether any conveyance, etc., was, in fact, made with intent to defraud creditors, when passed upon in the state court, is not one of a federal nature."

In McKenna vs. Simpson 129 U. S. 506, an assignee in bankruptcy brought an action in a state court to set aside a conveyance made by the bankrupt, as made to defraud creditors. The court held that when he resorted to that court and no question was raised as to his power under the acts of congress or the rights vested in him as assignee, the proceedings were governed and the judgment of the court upon the validity of the conveyances was subject to review, in the same manner and to the same extent, as proceedings of a similar character by a creditor to set aside conveyances in fraud of his rights by a debtor. In the proceedings of the state court no decision was made against the validity of any statute of, or

authority exercised under the United States, or against any right, title, privilege, or immunity claimed under the constitution of the United States or any statute thereof.

ARGUMENT.

No federal question was presented by the pleadings or passed upon by the trial court or the Supreme Court of the State of Wisconsin in rendering the judgment, to reverse which the writ of error has been issued. Neither in defendant's pleadings in the trial court nor briefs in the Supreme Court, was any right, privilege or immunity under a federal statute specifically set up or claimed. The only questions presented by the peadings in the trial court, were: First, Did the bankrupt give to plaintiff in error a preference? and, Second, Did plaintiff in error accept such preference with reasonable ground to believe that it was intended as such? There were the two questions litigated in the trial court and passed upon by the jury. The action was brought by the plaintiff and defendant in error, claiming a right under the bankruptcy act of 1898, namely, the right to recover certain property which had been transferred to plaintiff in error within four months of the adjudication and received by it with reasonable cause to believe that such transfer was intended as a preference. The Wisconsin court enforced such right. The defendant and plaintiff in error made no claim under any federal statute, but simply took issue with the facts alleged in the complaint. If this court were to assume jurisdiction, it would be for the sole purpose of passing upon the questions which were submitted to the jury, to determine as to whether or not the jury had properly performed its duty, and as to whether or not

the trial court had properly instructed on the law. The record presents nothing but a question of fact, and we respectfully submit that the writ of error should be dismissed.

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C. T. BUNDY and
R. P. WILCOX,
Attorneys for Defendant in Error.

Office Supreme Court, U. S.
FILED.
JAN 14 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 163

EAU CLAIRE NATIONAL BANK,

Plaintiff in Error.

vs.

RALPH W. JACKMAN, TRUSTEE OF THE ESTATE OF JOHN H. YOUNG, BANKRUPT,

Defendant in Error.

In Error to the Supreme Court of the State of Wisconsin

Brief and Argument of Defendant in Error

C. T. BUNDY,
R. P. WILCOX,

Counsel for Defendant in Error

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Brief of Defendant in Error

(ON MOTION TO DISMISS WRIT.)

NATURE OF ACTION.

This was an action brought by defendant in error against the plaintiff in error to recover the value of property transferred by the bankrupt to plaintiff in error, within four months of filing his voluntary petition in bankruptcy, for the purpose of giving it a preference over other creditors, and which was received by it, with knowledge that such transfer was made for the express purpose of giving it such preference.

HISTORY OF ACTION.

This action was commenced by the trustee in the circuit court of Eau Claire County, prior to the amendment of February 5th, 1903, giving federal courts jurisdiction of such actions, and resulted in a judgment in favor of the trustee and against the bank for $6,843.77, damages and costs. On appeal to the Supreme Court of the State of Wisconsin, this judgment was affirmed. This writ of error is brought to reverse such judgment of the Supreme Court of the State of Wisconsin.

STATE OF RECORD.

The record before this court, consisting of the pleadings, bill of exceptions and mandate of the Supreme Court of the State of Wisconsin, fails to show that any federal question was raised or decided by the Wisconsin courts, and that the whole matter was litigated purely as a question of fact.

COMPLAINT.

The complaint of the trustee alleged in substance, his appointment and qualification; that the bankrupt, within four months immediately preceding the filing of his petition in bankruptcy, and while he was hopelessly insolvent, as defendant well knew, transferred substantially all of his property to defendant, for the express purpose of giving it a preference, and that at the time of receiving such property, the plaintiff in error had reasonable cause to believe that it was made for the purpose of giving it such preference; that after transferring such property by way of mortgage, the plaintiff in error as a means of forclosing directed the bankrupt to convey the same by bill of sale to the Waters-Clark Lumber Company, and that such bill of sale was made pursuant to the direction of the plaintiff in error, and that Waters-Clark Lumber Company by agreement, paid the consideration or part of it to plaintiff in error; that by reason of such collusive arrangement and agreement aforesaid, and by means of said chattel mortgages and bills of sale, the defendant bank, within four months prior to filing the petition, appropriated to the payment of its indebtedness, substantially

all of the property of the bankrupt; that there was no other property in the possession of the plaintiff as trustee out of which the other creditors of the bankrupt could be paid, and that it was necessary to enable defendant in error to pay anything to the other creditors, to recover from said defendant bank the value of the property so by it appropriated by means of such transfer. (pp. 9-12 Record.)

ANSWER.

The answer of defendant, after admitting the bankruptcy proceedings, the appointment and qualification of the trustee, the execution of the mortagages in question, and that a portion of the proceeds of the mortgaged property was paid to the defendant bank, alleges: "that said mortgages were given for a good and valuable consideration, and that neither said mortgages nor the payments made to the defendant aforesaid, were made, given or received for the purpose of giving the defendant a preference over other creditors of said Young, *contrary to the provisions of the bankruptcy law.*" (p. 15 Record.)

This allegation that the transfer of a portion of the property of an insolvent debtor to one who knew of his insolvency, was not for the purpose of giving the transferee a preference, *contrary to the provisions of the bankruptcy law*, is the only reference found in the pleadings to such law, and seems to be the basis of the claim now made that the plaintiff in error specially set up and claimed the bankruptcy statute as a defense.

VERDICT.

In the trial court the issues were submitted to a jury by way of a special verdict, and the jury found that at the time of making the chattel mortgages, and at the time of giving the bill of sale, the property of the bankrupt at a fair valuation was not sufficient in amount to pay his debts; that at the time of accepting the chattel mortgages and at the time of causing the lumber and logs to be transferred to the Waters-Clark Company, the plaintiff in error and its officers had reasonable cause to believe that the bankrupt intended by such transfers to give it a preference.

By stipulation the trial judge found the value of the prop-

erty transferred, which value was made the basis of judgment. (pp. 17-18 record.)

JUDGMENT.

On this verdict the trial court entered judgment in favor of the trustee, for the net amount realized by the plaintiff in error from the proceeds of the logs and lumber in question, after paying time orders or time checks for amounts due to laborers, which under the Wisconsin statute might or would have become liens by filing proper petition, the plaintiff in error holding most of the time checks. (p. 18 record.)

BILL OF EXCEPTIONS.

Prior to the trial plaintiff in error demurred to the complaint on four grounds, none of which even suggest a federal question; namely, lack of jurisdiction of the state court, want of legal capacity in the plaintiff to sue, defect of parties plaintiff, and that said complaint does not state facts sufficient to constitute a cause of action. (p. 20 record.) This demurrer having been overruled, the parties went to trial and litigated the facts submitted to the jury by special verdict. No motion or objection was made during the trial, which raised any federal question. At the conclusion of plaintiff's evidence, the plaintiff in error moved for a non-suit, without specifying any grounds therefor. (p. 252 record.) On the trial the plaintiff in error made nine requests to the court to charge the jury, none of which suggested a federal question, (pp. 256-258 record) and each of which related solely to some of the questions of fact which the court was about to submit to the jury. After verdict, plaintiff in error filed exceptions to the charge of the trial court, none of which suggested a federal question. (264-265 record.)

The defendant also, after verdict, moved the court to amend the special verdict as rendered by the jury, and for judgment on the verdict, as amended, all without suggesting a federal question. (p. 266 record.) The trustee also moved for judgment upon the special verdict, and both motions coming on to be heard, the trial court filed an opinion on the questions presented to it, none of which were of a federal nature. (p. 267-274 record.)

After verdict, and before the entry of judgment, plaintiff in error moved the court to set aside the verdict and for a new trial, specifically stating the grounds, none of which were based on any right, privilege or immunity claimed under a federal statute or law. (p. 276 record.) This bill of exceptions contains all of the evidence taken on the trial of said action, and all the rulings, proceedings, decisions and exceptions made and taken therein, as appears by the certificate of the trial judge. (p. 294 record.)

RECORD IN SUPREME COURT.

Thereupon plantiff in error took an appeal to the Supreme Court of the State of Wisconsin, from the judgment entered on said verdict, which judgment was affirmed (p. 296 record), and in the opinion the several errors assigned and urged in that court by the plaintiff in error are considered and disposed of, none of them raising a federal question. (See opinion, pp. 302 to 311 record.)

Thereupon plaintiff in error moved for a rehearing in the Supreme Court, without specifying any federal question involved (p. 311) which motion was denied. (p. 314 record.)

PROCEEDINGS IN THIS COURT.

Plaintiff in error having filed in the Supreme Court of Wisconsin, a petition for a writ of error to this court, the record as it then existed was returned, under the seal of the clerk of that court, on the 28th day of November, 1905. On February 3rd, 1906, defendant in error moved to dismiss the writ for want of jurisdiction in this court. (See notice of motion on file.) Thereafter, and on March 7, 1906, Hon. John B. Cassoday, chief justice of the Supreme Court of Wisconsin, signed a certificate, which was returned to this court as a supplemental return on March 12th, 1906. (p. 315 record.)

AUTHORITIES ON MOTION.

This court has no jurisdiction to review the judgment of the Supreme Court of the State of Wisconsin, mentioned in the writ.

Sec. 709 R. S. of U. S.

Section 709 of the Revised Statues of the United States

provides: "A final judgment or decree in any suit in the highest court of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States and the decision is in favor of their validity; or where any title, right, privilege or immunity is claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed, by either party, under such constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States:

The Supreme Court may reverse, modify or affirm the judgment or decree of such state court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

To give the supreme court jurisdiction it must appear by the record that a federal question was involved.

Zadig vs. Baldwin 166 U. S. 485.

Citizens' Bank vs. Owensboro 173 U. S. 636.

Dewey vs. Des Moines 173 U. S. 193, 198.

Oxley Stave Company vs. Butler County 166 U. S. 648, 654.

Ocean Insurance Company vs. Polleys 13 Pet. 157.

In Oxley Stave Co. vs. Butler County, supra, the court said that the words "specially set up or claimed" in section 709 of the Revised statutes "were inserted in order that the revisory power of the supreme court should not extend to rights denied by the final judgment of the highest court of a state unless the party claiming such rights plainly and distinctly in-

dicated, before the state court disposed of the case, that they were claimed under the constitution, treaties or statutes of the United States. The words 'specially set up or claimed' imply that if a party intends to invoke for the protection of his rights, the constitution of the United States or some treaty, statute commission or authority of the United States he must so declare: and unless he does so declare 'specially,' that is, unmistakably this court is without authority to reexamine the final judgment of the state court. This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a federal right is left to mere inference. * *Upon like grounds the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right." The writ of error was dismissed.

In Dewey vs. Des Moines, supra, the court said: "Although no particular form of words is necessary to be used in order that the Federal question may be said to be involved, within the meaning of the cases on this subject, there yet must be something in the case before the state court which at least would call its attention to the Federal question as one that was relied on by the party, and then, if the decision of the court, while not noticing the question, was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. *It must appear from the record that the right set up or claimed was denied by the judgment or that such was its necessary effect in law.*"

In the case of Ocean Insurance Company vs. Polleys, supra, the court held that in determining whether the record shows a case for the exercise by the Supreme Court of the United States of its appellate jurisdiction over state courts, that court is not at liberty to resort to forced inferences and conjectural reasonings, or possible, or even probable, suppositions of the points raised in and decided by the state courts.

In order to bring a case from the state court to the Uni-

ted States Supreme Court for review, it is necessary that the record should show that the point giving jurisdiction was raised and decided in the court below.

11 Cyc. 937 and cases cited.

Detroit City Railway Co. vs. Guthard, 114 U. S. 133.

Bollin vs. Nebraska, 176 U. S. 83, 91.

Locber vs. Schroeder, 149 U. S. 580.

Miller vs. Texas, 153 U. S. 535.

Choteau vs. Gibson, 111 U. S. 200.

Hagar vs. California, 154 U. S. 639.

In Choteau vs. Gibson, supra, the court said: "From the the beginning it has been held that, to give us jurisdiction in this class of cases, it must appear affirmatively on the face of the record, not only that a federal question was raised and presented to the highest court of the state for decision, but that it was decided or that its decision was necessary to the judgment or decree rendered in the case."

In Detroit City Railway Co. vs. Guthard, supra, the court said:"the reason of the rule is obvious. Our jurisdiction for the review of a judgment of the highest court of a state depends on the decision by that court of one or more of the questions specified in section 709 Revised Statutes and in the way there mentioned. If there has been no such decision in the suit there can be no reexamination of the judgment here. It is what was actually decided that we are to consider, not what might have been decided; and, as our jurisdiction must appear affirmatively on the face of the record before we can proceed, the record must show either in express terms or by fair implication, not only the question but its decision. It is not enough to find by searching after judgment, that the requisite question might have been raised and presented for decision. It must appear that it was actually raised and actually decided." Motion to dismiss was granted.

In Hagar vs. California, supra, the court held that error will not lie to a state court unless a federal question was actually raised and decided or necessarily involved in the judgment. It is not enough that a federal question might have been raised.

The record must show the fact that the question was raised or claim made in the state court and was passed upon adversely to plaintiff in error.

Roby vs. Colehour, 146 U. S. 153, 159.

Capital National Bank vs. Cadiz First National Bank 172 U. S. 425.

Green Bay Canal Co. vs. Patten Paper Company, 172 U. S. 58.

Dewey vs. Des Moines, 173 U. S. 193.

In Roby vs. Colehour, supra, the court said, "Our jurisdiction being invoked upon the ground that a right or immunity, specially set up and claimed under the Constitution or authority of the United States, has been denied by the judgment sought to be reviewed, it must appear from the record of the case either that the right, so set up and claimed, was expressly denied, or that such was the necessary effect in law of the judgment."

In Capital Bank vs. Cadiz Bank, supra, the court said, "If a denial by the state court of a right under a statute of the United States is relied on as justifying our interposition, before it can be held that the state court thus disposed of a federal question, the record must show, either by the words used or by clear and necessary intendment therefrom, that the right was specially claimed; or a definite issue as to the possession of the right must be distinctly deducible from the record, without an adverse decision of which, the judgment could not have been rendered."

A certificate of the chief justice of the highest court of the state that a federal question was raised and determined is not properly a part of the record.

11 Cyc. 939 and cases cited.

Powell vs. Brunswick County, 150 U. S. 433.

Sayward vs. Denny, 158 U. S. 180.

Henkel vs. Cincinnatti, 177 U. S. 170.

Home for Incurables vs. New York, 187 U. S. 155.

Winous Point Shooting Club vs. Caspersen, 193 U. S. 189.

Fullerton vs. Texas, 196 U. S. 192.

Allen vs. Arguimbau, 198 U. S. 149.
Marvin vs. Trout, 199 U. S. 212.
Rector vs. City Deposit Bank, 200 U. S. 405.

In Powell vs. Brunswick County, supra, the court said, "The determination of the jurisdiction of this court to review the judgment of a state court under section 709 of the revised statutes necessarily devolves upon the court itself, and, while the certificate of the presiding judge of the state court as to the existence of the state of case upon which our interposition may be successfully invoked is always regarded with respect, it cannot confer jurisdiction upon this court to reexamine the judgment below.

In Home for Incurables vs. New York, supra, the court said, "It is true that the transcript contains the certificate of the chief judge of the court of appeals of New York, not appearing to have been by order of that court while the case was before it or under its control, which states that the Home did make, in that court, the federal questions now pressed for our consideration. But this certificate is not properly a part of the record. While we have said in some cases that such a certificate is entitled to great respect, and, in other cases, that its office is to make that more certain and specific which is too general and indefinite in the record, it is insufficient in itself to give us jurisdiction, or to authorize us to determine federal questions that do not appear, in any form, from the record, to have been brought to the attention of the state court."

In Marvin vs. Trout, supra, the court said, "It is well settled, in this court, that a certificate from a presiding judge of the state court, made after the decision of the case in that court, to the effect that a federal question was considered and decided by the court adversely to the plaintiff in error, cannot confer jurisdiction on this court, where the record does not otherwise show it to exist; that the effect of such a certificate is to make more certain and specific what is too general and indefinite in the record itself, but it is incompetent to originate the federal question."

A petition for rehearing addressed to a state court forms no part of the record and cannot be looked into for the purpose of determining whether a federal question was raised and decided by the state court.

Lagrange vs. Choteau, 4 Pet. 287.

Susquehanna Boom Co. vs. West Branch Boom Co., 110 U. S. 57.

Simmerman vs. Nebraska, 116 U. S. 54.

Harding vs. Illinois, 196 U. S. 78.

In Susquehanna Boom Co. vs. West Branch Boom Co., supra, the court said, "We act on the case as made to the court below when the judgment was rendered, and cannot incorporate into the record any new matter which appears for the first time after the judgment, on a petition for rehearing. Such a petition is no part of the record on which the judgment rests."

The petition for the allowance of a writ of error from the Supreme Court of the United States to a state court, forms no part of the record for the purpose of determining whether the former court has jurisdiction to review the judgment.

11 Cyc. 938 .

California Powder Works vs. Davis, 151 U. S. 389.

Sayward vs. Denny, 158 U. S. 180.

Warfield vs. Chaffe, 91 U. S. 690.

Clark vs. Pennsylvania, 128 U. S. 395.

Butler vs. Gage, 138 U. S. 52.

Corkran Oil Company vs. Arnandet, 199 U. S. 182.

In Warfield vs. Chaffe, supra, the court said, "The record sent here from the Supreme Court does not disclose any such claim. The petition for the allowance of the writ in this court is not part of the record of the court below. We act only upon that record; and that does not show that any federal question was either presented by the pleadings or upon the trial in the district court, or decided by the supreme court."

In Clark vs. Pennsylvania, supra, the Court said, "We act

only upon the record of the court below, and of that record, the petitions for the writs of error form no part."

If the record fails to show that a federal question has been raised an assignment of errors cannot be availed of to import such a question into the cause.

11 Cyc. 938 and cases cited.

Fowler vs. Lamson, 164 U. S. 252.

Harding vs. Illinois, 196 U. S. 78.

Cornell vs. Green, 163 U. S. 75.

Missouri Pac. Ry. Co. vs. Fitzgerald, 160 U. S. 556, 575.

Corkran Oil Company vs. Arnandet, 199 U. S. 182.

In Missouri Pacific Railway Company vs. Fitzgerald, supra, the court said, "An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised and passed on in the court below, but we may refer to such assignment by way of convenience to ascertain the contentions of the plaintiff in error."

In Cornell vs. Green, supra, the court held that an assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the court below and the rulings asked thereon, so as to give jurisdiction to this court.

The federal question where not presented prior to the decision by the court of last resort of the state comes too late.

Bollin vs. Nebraska, 176 U. S. 83.

Citizens' Savings Bank vs. Owensboro, 173 U. S. 636.

Duncan vs. Missouri, 152 U. S. 377.

In Duncan vs. Missouri, supra, the court said, "To give jurisdiction to this court, the title, right, privilege or immunity relied on must be specially set up or claimed at the proper time and in the proper way, and the decision must be against it; whereas, in this case, the question was not suggested until after judgment, and after the application for rehearing had been overruled, and only then in the form of a motion to transfer the case."

In Bollin vs. Nebraska, supra, the court said, "We have repeatedly decided that an appeal to the jurisdiction of this court must not be a mere afterthought, and that if any right, privilege or immunity is asserted under the constitution or laws of the United States it must be specially set up and claimed before the final adjudication of the case in the court from which the appeal is sought to be maintained."

The federal title, right, privilege or immunity must be set up or claimed in the trial court, whenever, under the state practice, the highest state court in reviewing the judgment of the trial court, refuses to consider questions not therein raised.

Layton vs. Missouri, 187 U. S. 359.

Jacobi vs. Alabama, 187 U. S. 133.

Baldwin vs. Kansas, 129 U. S. 52.

Spies vs. Illinois, 123 U. S. 131.

Mutual Life Insurance Company vs. McGrew, 188 U. S. 309.

In Spies vs. Illinois, supra, the court said, "To give us jurisdiction under section 709 of the revised statutes because of a denial by a state court of any title, right, privilege or immunity claimed under the constitution or any treaty or statute of the United States, it must appear on the record that such, title, right, privilege or immunity was specially set up or claimed at the proper time in the proper way. To be reviewable here the decision must be against the right so set up or claimed. As the supreme court of the state was reviewing the decision of the trial court it must appear that the claim was made in that court, because the supreme court was only authorized to review the judgment for errors committed there and we can do no more."

In McGrew vs. Insurance Company, supra, the court said, "The proper way to raise the question or make the claim is by pleading, motion, exception or other action, part, or being made part, of the record showing that the claim was presented to the court."

The appellate jurisdiction of the supreme court of Wisconsin extends only to the revision of the decisions of the inferior courts.

Constitution of Wisconsin, Article 7, Section 3.

State vs. Brownell, 80 Wis. 563.

Seiler vs. State, 112 Wis. 293, 299.

In Seiler vs. State, supra, the court said, "Appellate jurisdiction extends only to the revision of the decisions of inferior courts."

A federal question cannot be raised for the first time by a petition for rehearing after judgment in the highest court of the state, so as to bring the case within the appellate jurisdiction of the United State Supreme Court.

11 Cyc. 936.

Sayward vs. Denny, 158 U. S. 180.

Loeber vs. Schroeder, 149 U. S. 580.

Miller vs. Cincinnati R. Co., 168 U. S. 131.

Fullerton vs. Texas, 196 U. S. 192.

Turner vs. Richardson, 180 U. S. 87.

Meyer vs. Richmond, 172 U. S. 82.

French vs. Taylor, 199 U. S. 274.

Corkran Oil Company vs. Arnandet, 499 U. S. 182.

In Loeber vs. Schroeder, supra, the court said, "It is also well settled by the decisions of this court that the attempt to raise for the first time a federal question in a petition for rehearing after judgment comes too late."

It is not raised in time where it first appears in the petition for writ of error from the Supreme Court of the United States to the state court.

11 Cyc. 936.

Johnson vs. New York Life Ins. Co., 187 U. S. 491.

Simmerman vs. Nebraska, 116 U. S. 54.

French vs. Taylor, 199 U. S. 274.

Chicago, Indianapolis, etc. Ry. Co. vs. McGuire, 196 U. S. 129.

In Johnson vs. New York Life Insurance Co., supra, the court said: "Conceding that it was unnecessary to set it up in any pleading anterior to the trial since it could not be claimed that the right had been denied to her until the trial took place, it was clearly her duty to make the claim either on the motion for a new trial, or in the assignments of error filed in the supreme court of the state. In neither does it appear, nor is there any allusion to it in the opinion of the supreme court. It first appears in the petition for a writ of error from this court. This is clearly insufficient."

Nor can the federal question be raised for the first time in the assignment of error to the supreme court of the United States.

French vs. Taylor, 199 U. S. 274.

In French vs. Taylor, supra, the court said, "It is said that federal questions were raised on a petition for rehearing, but this is denied, and the petition is not in the record. But if it were true, the suggestion came too late, though if the supreme court had considered and decided such alleged federal questions, we could take jurisdiction, but the court did not do so. So as to the petition for writ of error from this court, or the assignments of error here, they form no part of the record on which it is to be ascertained whether the state court decided a federal question."

To give the supreme court jurisdiction it must appear that the plaintiff in error set up and claimed some right, title, privilege or immunity under a federal statute, and that such right, title, privilege or immunity was denied by the judgment of the state court sought to be reviewed.

11 Cyc. 928.

29 Am. & Eng. Enc. of Law 248.

Beal's vs. Cone, 188 U. S. 184.

Home for Incurables vs. New York, 187 U. S. 155.

Dewey vs. Des Moines, 173 U. S. 193, 200.

Sayward vs. Denny, 158 U. S. 180.

Smith vs. Adsit, 16 Wall 185.
Farney vs. Towle, 1 Black 262.

In Sayward vs. Denny, supra, the court said: "As the validity of no treaty or statute of, or authority exercised under, the United States, nor of a statute of, or authority exercised under, any state, was drawn in question, it is essential to the maintenance of our jurisdiction that it should appear that some title right, privilege or immunity under the constitution or laws of the United States was specially set up or claimed in the state court, and that the decision of the highest court of the state, in which such decision could be had, was against the title, right, privilege or immunity so set up or claimed."

In Dewey vs. Des Moines, supra, the court said: "In order to be available in this court some claim or right must have been asserted in the court below by which it would appear that the party asserting the right founded it in some degree upon the constitution or laws or treaties of the United States. In such case, if the court below denied the right claimed it would be enough; or if it did not in terms deny such right, if the necessary effect of its judgment was to deny it, then it would be enough. But the denial whether express or implied, must be of some right or claim founded upon the constitution or the laws or treaties of the United States which had in some manner been brought to the attention of the court below. A claim or right which has never been made or asserted cannot be said to have been denied by a judgment which does not refer to it. A point that was never raised cannot be said to have been decided adversely to a party, who never set it up or in any way alluded to it. Nor can it be said that the necessary effect in law of a judgment, which is silent upon the question, is the denial of a claim or right which might have been involved therein, but which in fact was never in any way set up or spoken of."

The right, title, privilege or immunity claimed must be personal to the plaintiff in error. He is not entitled to review where the right, title, privilege or immunity was asserted by

the other party, and the decision was in favor of that party and adverse to himself.

29 Am. & Eng. Enc. of Law 248 and cases cited.

Fulton vs. McAffee, 16 Pet. 149.

Burke vs. Gaines, 19 How. 388.

Missouri vs. Adriano, 138 U. S. 496.

Texas & Pacific Ry. Co. vs. Johnson, 151 U. S. 81.

De Lamar's Nevada Gold Mining Company vs. Nesbitt, 177 U. S. 523.

Kizer vs. Texarkana & Fort Smith Ry. Co., 179 U. S. 199.

In Missouri vs. Adriano, supra, the court said: "Here is clearly a right or privilege claimed by respondent under a statute of the United States within the meaning of revised statutes section 709, and had the judgment of the Supreme Court of Missouri been adverse to his claim, there could be no doubt of his right to a writ of error from this court to review its ruling. It is insisted, however, that the relator has no right to a review of the ruling in favor of respondent, as he claimed no right or privilege, personal to himself, or to his own status as a citizen, from such statute. The question thus presented is, whether the right or privilege must necessarily be personal to the plaintiff in error, or whether he is not entitled to a review where such right or privilege is asserted by his opponent, and the decision is in favor of such opponent and adverse to himself. While there is some force in the argument that the right of review in cases involving the construction of a federal statute, should be mutual, the act limits such right to cases where the state court has decided against the title, right, privilege or immunity set up or claimed under the statute."

In Kizer vs. Texarkana & Fort Smith Ry. Co., supra, the court said: "He now says that, although he set up no claim of any title, right, privilege or immunity, under the act of Congress, yet the claim which defendant specially set up under it was acknowledged and enforced by the state court, and the statute was thus construed unfavorably as to him, and that he has, therefore, a right to have the judgment of the state court, which was based on such construction, reviewed here, under section 709 of the Revised Statutes of the United

States. But that section provides, so far as here applicable, that when any right, title, privilege or immunity is claimed under a statute of the United States, and the decision of the state court is against the title, right, etc., specially set up or claimed under such statute, then and in such case the judgment of the state court may be reviewed by this court."

"Here, the claim under the federal statute has been allowed by the state court, and the contract sued on by the plaintiff in error has been denied validity because of its violation of that statute. It is not every case where a federal statute has been construed by a state court that gives a right of review to this court, but the claim of any right, title, privilege or immunity under the statute must have been denied by the state tribunal in order to give us jurisdiction to review its judgment. That a federal statute was construed unfavorably to one of the parties to the suit is no ground for jurisdiction by this court, unless such construction was not only unfavorable, but was against the right, title, etc., specially set up and claimed under the statute. In that case the party setting up and claiming the right under the statute, which has been denied, can obtain a review here. Thus it might happen, as it has happened in this case, that, while the decision upon the construction of the statute was unfavorable to the maintenance of the cause of action set forth by the plaintiff in error, it was not against, but in favor of, the claim made under the federal statute."

Mere questions of fact present no federal questions and the findings of the jury are verities in this court.

11 Cyc. 940.

Smiley vs. Kansas, 196 U. S. 447.

Dower vs. Richards, 151 U. S. 658.

Western Union vs. Call Publishing Co., 181 U. S. 92.

In Smiley vs. Kansas, the court said: "The verdict of the jury settles all questions of fact."

In Dower vs. Richards the court said: "That this court, in an action at law, at least, has no jurisdiction to review the decision of the highest court of a state upon a pure question of fact, although a federal question would or would not be pre-

sented according to the way in which the question of fact was decided, is clearly settled * * *"

In Kaufman vs. Tredway 196 U. S. 447, the court held that whether a bankrupt was insolvent at the time of giving the alleged preference, and whether the creditor had reasoncause to believe that it was intended thereby to give a preference are questions of fact as to which the supreme court of the United States is concluded by the verdict of the jury in a suit by the trustee to recover the amount of the preference.

In Thompson vs. Fairbanks 196 U. S. 516, 523, the court said: "The question whether any conveyance, etc., was, in fact, made with intent to defraud creditors, when passed upon in the state court, is not one of a federal nature."

In McKenna vs. Simpson 129 U. S. 506, an assignee in bankruptcy brought an action in a state court to set aside a conveyance made by the bankrupt, as made to defraud creditors. The court held that when he resorted to that court and no question was raised as to his power under the acts of congress or the right vested in him as assignee, the proceedings were governed and the judgment of the court upon the validity of the conveyances was subject to review, in the same manner and to the same extent, as proceedings of a similar character by a creditor to set aside conveyances in fraud of his rights by a debtor. In the proceedings of the state court no decision was made against the validity of any statute of, or authority exercised under, the United States, or against any right, title, privilege, or immunity claimed under the constitution of the United States or any statute thereof.

CASES RELIED UPON BY PLAINTIFF IN ERROR

The decisions of this court relied upon by plaintiff in error to sustain the jurisdiction, clearly establish the want of it. In every case where the jurisdiction was sustained, the plaintiff in error set up and claimed either an affirmative defense or affirmative relief by virtue of some federal statute or treaty. None of these cases sustain plaintiff's contention, that where one party asserts a right under a federal statute and the state

court in construing that statute enforces the right claimed, that this court will review such construction at the instance of the opposite party.

In Factors Insurance Co. vs. Murphy, 111 U. S. 738, the only controversy was as to the effect to be given a sale of property made by order of the United States court, and a decision having been made adversely to the right claimed, this court took jurisdiction for the purpose of reviewing such decision.

In Traer vs. Clews, 115 U. S., 528, the plaintiff in error in the state court set up as a defense the statute of limitations of the United States, and the state court having held adversely to him, this court properly took jurisdiction to review such decision.

In Dimock vs. Revere Copper Co., 117 U. S., 559, the defendant in the state court pleaded his discharge in bankruptcy in bar of a suit. The court held such bar to be no defense, whereupon the defendant in the state court sued out a writ of error to this court, which took jurisdiction for the purpose of passing upon the effect to be given to such discharge in bankruptcy.

In Palmer vs. Hussey, 119 U. S., 96, the plaintiff in error brought an action in the state court against one to whom a discharge in bankruptcy had been granted, the plaintiff claiming that his debt was of such a character as not to be included in such discharge. The state court held against him, and this court took jurisdiction to review such decision.

In Winchester vs. Reiskell, 119 U. S. 450, plaintiff in error in the state court, by proper pleadings, alleged that the federal court had exclusive jurisdiction of the subject matter. The state court denied such contention, and this court properly took jurisdiction to review such holding.

In Williams vs. Hurd, 140 U. S. 529, an assignee in bankruptcy made claim to certain funds awarded by the Alabama Claim Commissioners, pursuant to section 5044 R. S. of U. S. The state court denied his claim and refused to enforce such statute. This court properly took jurisdiction.

In Dushane vs. Beall, 161 U. S., 513, an assignee in bankruptcy made claim to certain property under the bankruptcy

statute. The state court refused to enforce the federal statute relied upon, and this court properly held that the assignee was entitled to have such decision reviewed here.

In McCormick vs. Market National Bank, 165 U. S., 538, both parties claimed under section 5136 R. S. of U. S., one claiming the right granted by such statute, and the other claiming under the exception contained in such section, relative to the authority of United States banks to do business before authorized by the comptroller to do so. The Supreme Court of Illinois denied the claim of plaintiffs and held that under the federal statute cited, the claim of plaintiff in error could not be enforced. The assignment of error in the state court pointed out this statute specifically, and predicated rights upon it. This court properly took jurisdiction to review the decision of the Illinois court denying the rights claimed under this federal statute.

In Farmers' and Merchants' Insurance Co. vs. Dobney, 189 U. S. 301, the plaintiff in error urged the unconstitutionality of a Nebraska statute before the Supreme Court of that state, assigning such unconstitutionality as error in the court of last resort of that state. His contention was denied, and this court properly took jurisdiction to review such decision.

In Crawford vs. Burke, 195 U. S., 176, the defendant in the state court set up his discharge in bankruptcy as a defense, and the state court held it did not apply to the debt sued upon. The defendant in the state court thereupon sued out a writ of error to this court, which properly took jurisdiction.

In Kaufman vs. Tredway, 195 U. S. 271, a set off was claimed by the defendant in the state court, pursuant to the provisions of section 60c of the bankruptcy act. The state court held the claim made did not constitute a set off under such section, and this court took jurisdiction to review such decision, at the instance of the defendant in the state court.

In Thompson vs. Fairbanks, 196 U. S., 516, a trustee in bankruptcy brought an action in the state court to recover a preference, and the state court refused to enforce the bankruptcy act upon which he relied. This court took jurisdiction at the instance of the trustee.

In Humphrey vs. Tatman, 198 U. S. 91, the Massachusetts supreme court refused to follow its own decisions in deference to the supposed provisions of the bankruptcy act, after this court had held by a former decision that the question involved should be governed solely by the laws of the State of Massachusetts. This was in effect denying the effect of the decisions of this court in construing the bankruptcy act, and this court took jurisdiction at the instance of the plaintiff in error, who claimed the right to retain the property in question by virtue of such former decision.

In Nutt vs. Knut, 200 U. S. 12, decided January 2nd, 1906, the defendant in the state court set up as a defense the invalidity of the contract sued upon, by reason of a statute of the United States, prohibiting the assignment of claims against the United States. The state court overruled the defense and refused to give effect to the federal statute relied upon. This court, of course, took jurisdiction by writ of error sued out by the defendant, whose rights under the federal statute were denied.

ARGUMENT.

From the foregoing authorities it is apparent that this court has no jurisdiction to review the decision and judgment of the Supreme Court of Wisconsin in this case, unless it clearly appears from the record,

(a) That a federal question was raised by the plaintiff in error in the state court, by specially setting up some right, claim or immunity under the federal statutes.

(b) That the question so raised was actually decided by the Supreme Court of Wisconsin, adversely to plaintiff in error.

(c) That such right, title or immunity so set up was personal to plaintiff in error.

(d) That such question was presented and right claimed by pleading, motion, exception or other action, which is part of the record, showing that the alleged federal question was clearly presented to and passed upon by the state court.

And it is equally apparent that in determining what is shown by the record, for the purpose of determining jurisdiction, no proceeding subsequent to the entry of judgment appealed from, constitutes any part of the record. This rule eliminates entirely,

(a) A certificate of the Chief Justice of the State of Wisconsin sent to this court as a supplemental return, since the filing of the pending motion.

(b) The petition for rehearing addressed to the state court.

(c) The petition for the allowance of a writ of error to this court.

(d) The assignments of error made in this court.

An examination of the record here presented under the foregoing rules, shows clearly that the attempt to inject a federal question into this case is an after-thought, and that such a question was never raised in the trial court or appellate court of Wisconsin, or suggested until after the court of last resort of that state had affirmed a judgment, adverse to plaintiff in error.

The only questions presented by the pleadings in the trial court were, First, Did the bankrupt give to plaintiff in error a preference? and Second, Did plaintiff in error accept such preference, with reasonable ground to believe it was intended as such? These were the two questions litigated on the trial and passed upon by the jury. The action was brought by the plaintiff and defendant in error to recover the value of property, which he alleged had been transferred by the bankrupt to plaintiff in error, within four months of the adjudication, and which was received by it with reasonable cause to believe that such transfer was intended as a preference. The Wisconsin court enforced such right. The defendant and plaintiff in error made no claim under any federal statute, but simply took issue with the facts alleged in the complaint. The plaintiff alleged a state of facts, which if true, entitled him to recover by reason of section 60b of the bankruptcy act. The defendant denied the insolvency of the bankruptcy at the time of the transfer and denied having reasonable ground to be-

lieve that the transfer was made to it for the purpose of giving it a preference. Its answer was in substance a general denial. Plaintiff in error now contends that the state court erred in its construction of this federal statute; but this court is not vested with jurisdiction to correct all errors of state courts. Congress, prior to the amendment of February 5th, 1903, vested jurisdiction in actions by a trustee to recover a preference, solely in the state courts, without any attempt to extend the appellate jurisdiction of this court in actions of that character. The jurisdiction of this court therefore, must be tested in precisely the same manner as in cases where state courts, in the exercise of their jurisdiction, are called upon to give effect to, or construe, any other federal statute. If this court has jurisdiction to review this judgment, it is because this court can review any judgment where the state court in charging a jury as to a question of fact deems it necessary to define to them the meaning or the effect of a federal statute. This is clearly not sufficient.

Suppose A brings an action against B in a state court to enforce a penalty provided by a federal statute, and B pleads not guilty. Can it be said that B has specially set up or claimed an immunity under the statute sued upon, and that in the event that the state court enforces the penalty, B can have such decision reviewed in this court? Such is the contention of plaiatiff in error. It was the same contention made to this court in Kizer vs. Texarkana & Ft. Smith Ry., Co. supra, where this court said: "Plaintiff in error now says that although he set up no claim of any title, privilege or immunity under the act of Congress, yet the claim which defendant in error specially set up under it was acknowledged and enforced by the state court, and the statute was thus construed unfavorably as to him, and that he has therefore a right to have the judgment of the state court, which was based on such construction, reviewed here, under section 709 of the Revised Statutes of the United States. But....it is not every case where a federal statute has been construed by a state court that gives a right to review to this court..... That a federal statute was construed in favor of one of the

parties to the suit is no ground for jurisdiction by this court, unless such construction was not only unfavorable, but was against the right, title or immunity specially set up and claimed under the statute. In that case the party setting up a claim or right under the statute which has been denied, can obtain a review here. Thus, it might happen, as it has happened in this case, that while the decision upon the construciton of the statute was unfavorable to the maintenance of the action set forth by the plaintiff in error, it was not against, but in favor of the claim made under the federal statutes."

If, on the verdict of the jury finding that plaintiff in error had received a preference within four months of the adjudication, with reasonable ground to believe the transfer in question was intended as a preference, the state court had refused to enter judgment in favor of defendant in error, pursuant to the provisions of the bankruptcy statute, it is clear that such defendant in error would have been entitled to have the decision of the state court reviewed here, because in that case the state court would have refused to enforce a right claimed under the federal statute; but merely denying liability under a federal statute, cannot be said to be "specially claiming a right, title or immunity" under it. If so, this court would be vested with jurisdiction to review every decision of the state court, which depended upon a construction of a federal statute, under which either party claimed, whether such decision was in favor of, or against the party setting up the claim, and the provision of section 709, limiting the powers of this court to cases where the right, title or immunity specially set up was denied, would be meaningless.

The sole contention of plaintiff in error is that the verdict found by the jury is not supported by the facts, and that the jury have rendered such erroneous verdict under improper instructions. If this court were to assume jurisdiction, it would be for the sole purpose of testing the correctness of the verdict of the jury and as to whether or not the trial court, in enforcing a right claimed under a federal statute, had erred in its rulings as to the admissibility and rejection of

evidence, form of special verdict or in its instructions.

It is respectfully submitted the record presents nothing but a question of fact, and that the writ of error should be dismissed.

BRIEF ON THE MERITS

NATURE OF ACTION AND LEADING FACTS.

This is an action brought by plaintiff as trustee of the estate of a bankrupt, to recover the value of a preference received by defendant within four months before the filing of the petition in bankruptcy, such preference having been received by plaintiff in error with reasonable ground to believe that it was intended as such, under the provisions of section 60b of the Bankruptcy Act of 1898, which provides, "If a bankrupt shall give a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it or to be benefitted thereby, or his agent acting therein, shall have had reasonable cause to believe it was intended thereby to give a preference, it shall be voidable by the trustee and he may recover the property or its value from such person."

VERDICT.

The jury have found that on February 20th, when the bankrupt gave plaintiff in error the chattel mortgages mentioned in the complaint, he was insolvent; that he was insolvent on March 3rd, when he transferred the mortgaged lumber to the Waters-Clark Lumber Company, and on March 29th when he transferred the mortgaged logs and other logs to the Waters-Clark Lumber Company; that the Waters-Clark Lumber Company was acting for the bank when it took the legal title to the lumber and logs in question, under an arrangement between said Lumber Company, the Bank and the bankrupt, by which the bank was to receive the benefit by receiving a portion of the proceeds; that when the bankrupt executed the chattel mortgages and afterwards transferred the lumber and logs to the Waters-Clark Lumber Company, he intended to give the bank a preference; and that at the time the mortgages were given and at the time the lumber and logs were trans-

ferred, the agents of the bank, acting for it, had reasonable cause to believe that the bankrupt thereby intended giving it a preference. (p. 16 record.)

In addition to this verdict, by stipulation of parties, the trial court found the value of the property afterwards transferred by the bankrupt to Waters-Clark Lumber Company, the amount of the proceeds which was by the latter company paid over to the bank in discharge of lienable time checks it held, and the amount paid to it and applied on the bankrupt's notes, it held, as follows:

(a) That the value of the lumber, etc., embraced in one of the mortgages given by the bankrupt to plaintiff in error on February, 20th, 1902, was in excess of $3,452.85.

(b) That the value of the lumber alone embraced in said mortgage, which was transferred to the Waters-Clark Lumber Company on March 3rd, 1902, was $3,452.85.

(c) That the value of the note given by Waters-Clark Lumber Company to the bankrupt, and by him turned over to the defendant for said lumber, was $3,452.85.

(d) That the value of the Cadott logs embraced in the mortgage of February 20th, 1902, was $10,077.84.

(e) That the value of the note given by Waters-Clark Lumber Company to Young as part payment for the logs, which note was delivered to plaintiff in error by the bankrupt on March 29th, 1902, was $2,508.14.

(f) That the value of the up-river logs which were transferred by the bankrupt to Waters-Clark Lumber Company on March 29th, 1902, was $11,055.84 (pp. 17-18 record.)

On the trial the parties entered into a stipulation, (p. 254 record) as to the amount of lienable and non-lienable time checks which plaintiff in error held on February 20th, 1902, when the mortgages were given, and on March 29th, 1902, when the logs were transferred to the Waters-Clark Lumber Company, including the following stipulation:

"That the total amount received by the bank on claims that it held on February 20th, 1902, (when the mortgage was given), not including what was paid to it on labor orders, was $6,660.99."

It thus appears from this stipulation that the bank was actually paid, out of the proceeds of the logs and lumber, the sum of $6,660.99, exclusive of what it received for the time checks it held. (p. 254 record.)

JUDGMENT.

The trial court entered judgment for this sum, less $406, which the court erroneously thought represented advancements made after receiving the mortgages, in taking up non-lienable time checks. (p. 274 record.) This was in direct violation of the stipulation of parties, from which it appears that the $406 of additional advancements was made after the mortgages were given on February 20th, and before March 29th when the logs were transferred, at which latter date the bank held $1,106 of non-lienable claims. (p. 254 record.) It was conceded on the hearing before the Supreme Court, that this $406 should not have been deducted, but that other errors in computation left the judgment entered substantially correct. (p. 310 record.)

The judgment entered by the court included the entire proceeds of the mortgaged lumber paid for by Waters-Clark Lumber Company to Young by note, and by him immediately turned over to the bank on March 3rd, 1902, amounting to	$3,452.85
And the net proceeds of the logs sold by the bankrupt to Waters-Clark Lumber Company, which was arrived at by deducting from the purchase price all outstanding labor liens, and for which that company gave the bankrupt a note, which was immediately turned over to the plaintiff in error, which amounted to.....	2,508.14
Together with non-lienable time checks held by the bank at the time the mortgages were given, and which were paid to it by Waters-Clark Lumber Company, amounting to	700.00
Total....	$6,660.99
Less $406 erroneously deducted, leaving $6,254.99, for	

which, with interest from the commencement of the action, judgment was entered. (p. 274 record.)

From this judgment, both parties appealed to the Supreme Court of Wisconsin, the plaintiff (defendant in error) insisting that some one of his various motions for judgment should have been granted (pp. 301-302 record), and that the trustee was entitled to recover the value of the property in whatever form it can to the bank, within four months prior to the adjudication, whether applied by it to the payment of time checks or on its general indebtedness. It was insisted by the trustee that the state court in this action could not determine as to whether or not such labor liens constituted preferred claims or otherwise, and that as the undisputed evidence showed that no claim for lien had been filed, as required by the Wisconsin statute, no lien actually existed; and that the trustee should have recovered the value of the two notes turned over to the bank, together with the sum of $5,437.42, the amount paid to it for time checks it held when the mortgages were given, which sums aggregated $11,398.41. (p. 474 record.) The state court denied plaintiff's contention and gave judgment only for the amount received by the bank and applied by it on its indebtedness evidenced by notes and nonlienable time checks.

LEADING FACTS.

Although the facts as found by the jury are verities in this court, it may assist to a clear understanding of the verdict and of the errors assigned, if a brief statement of the leading facts established by the evidence is made. The bankrupt, Young, was the owner of a small mill which he operated in the vicinity of Eau Claire, Wisconsin, for two or three years previous to June 7th, 1902, when he was adjudicated a bankrupt. He commenced dealing with the plaintiff in error in 1900, at which time he borrowed $2,000. (p. 96 record.) This indebtedness continued to increase, until February 20th, 1902, the date of the mortgages in question, when it amounted to $27,000. A few days prior to giving the mortgages his mill burned, leaving him without means of manufacturing the saw

logs then on hand. The bank collected the insurance on the mill and insisted upon his giving a chattel mortgage, covering his logs and lumber. After protesting that he could not do this in fairness to his other creditors, he finally yielded, and the mortgages were executed and delivered on February 20th, 1902, covering all of his lumber, lath and shingles and a large portion of his saw-logs—in fact, all except the so-called up-river logs, in which he had an interest of only $900. (pp. 113 to 115 record.) D. S. Clark was president of a company doing business at Duluth, known as Waters-Clark Lumber Company, and was also director in defendant bank. (p. 21 record.) On March 3rd, 1902, the bankrupt was requested to come to the banking house of the plaintiff in error, where he was told that the mortgages he had given would not hold as against his other creditors, and he was requested to transfer the lumber included in the mortgage to the Waters-Clark Lumber Company, the president of which was then present. (pp. 114 to 116 record.) This was done, and the Waters-Clark Lumber Company in payment executed a demand note, payable to the bankrupt, for $3,452.85, which was by him indorsed and then and there turned over to Mr. Coffin, the cashier of the defendant bank. (p. 22 record.) Soon after, the officers of defendant bank requested the bankrupt to execute a like bill of sale of all his logs to the Waters-Clark Lumber Company, which he did by bills of sale, dated March 29th, 1902. (pp. 24-25 record.) The Waters-Clark Lumber Company paid for these logs by deducting from the price mentioned in the bills of sale the outstanding time checks, and executing a note to the bankrupt for the difference, amounting to $2,508.14, which note was by the bankrupt then and there turned over to the defendant bank. (p. 28 record.) The bills of sale given by the bankrupt to the Waters-Clark Lumber Company of both lumber and logs, were made at the request and solicitation of the officers of the bank, pursuant to an agreement by which the time checks which the bank held were to be paid and any excess over the amount necessary to pay other time checks was to be given to the bank to apply on its indebtedness, to secure which the mortgages of February 20th, 1902 had been given. (p. 44 to 50 record.) The Waters-Clark Lumber Com-

pany immediately proceeded to sell the lumber for which it bad agreed to pay Young $3,452.85 for $2,421.21 and sold the logs for which it had agreed to pay $21,073.68 for $17,050, thus apparently losing $4,000 in the transaction. (pp. 25-33 record.)

On June 7th, the very day on which the petition in bankruptcy was filed, the Waters-Clark Lumber Company gave defendant bank a check for $13,813.50, to cover the time checks it held against the property and which might have become liens had the Wisconsin statute been complied with. (p. 83 record.) No part of this check is embraced in the present judgment, as the notes were not paid until during the trial of this cause in the state court in March, 1903. (pp. 22-23 record.)

In addition to the $27,000 of indebtedness due to plaintiff in error, and in addition to outstanding time checks, the bankrupt owed debts which were filed in and allowed by the bankruptcy court, amounting to $12,265.56, of which amount about $1,500 was preferred. (pp. 67-68 record.)

In addition to the money received from Waters-Clark Lumber Company within four months prior to the adjudication, the defendant bank collected $725.81 on April 5th, 1902 on account of insurance on the mill. (p. 77 record.) This is not included in the judgment.

ERRORS ASSIGNED BY PLAINTIFF

FIRST, That the Supreme Court of the State of Wisconsin erred in determining that the plaintiff's complaint therein stated a cause of action, and in refusing to reverse the judgment for that reason.

Before the state supreme court, plaintiff in error abandoned the other grounds for demurrer, except the one now assigned as error and urged two defects in the complaint; namely, because such complaint did not allege a demand for the return of the property, and because it contained no allegation that other creditors had filed claims in the bankruptcy proceeding. Both of these are sufficiently answered by the Wisconsin Supreme Court at page 302 record.

SECOND, That said state court erred in determining that the defendant, Eau Claire National Bank, was liable in said action for the value of the logs and lumber described in plaintiff's complaint, to the extent of the chattel mortgage interest of the defendant therein.

The undisputed evidence is conclusive that plaintiff in error took chattel mortgages on the property of the bankrupt within four months of his adjudication as a bankrupt, and at a time when the bankrupt was wholly insolvent, with reasonable cause to believe that such mortgage was given for the express purpose of giving it a preference over other creditors. The fact that the bank, instead of taking possession of the mortgaged property and completing the foreclosure it had commenced, induced the bankrupt to convey the property to the Waters-Clark Lumber Company, under an agreement between all of the parties that the bankrupt should receive no part of the consideration, and that all should be applied to paying the liens against the logs, a large portion of which were held by the bank, and the balance turned over to it to be applied on its general indebtedness, is now urged as a successful evasion of the bankruptcy law, and that notwithstanding every condition requisite to liability was found by the jury, that the court erred in entering a judgment in conformity to section 60b on such verdict.

THIRD, That said court erred in determining that defendant was liable in said action for having received as a preference, contrary to the provisions of section 60a and section 60b of the bankrupt act of July 1, 1898, as a portion of his chattel mortgage interest in said logs, the sum of $1,335.62 as the proceeds of the sale of the portion of said logs known as the up-river logs, on which logs said defendant never held any chattel mortgage, and which logs were never transferred to said defendant.

It is a sufficient answer to this contention that plaintiff in error never raised this question in the state court until after the judgment appealed from was affirmed by the Supreme Court of Wisconsin. Before the Supreme Court it was urged that the judgment was excessive, in that the sum of $377.05

should have been deducted, on account of overpayment by Waters-Clark Lumber Company of that amount to the holders of time checks, and that therefore the note given by it to Young for the balance of the purchase price of the logs, should have been reduced by that amount. The Supreme Court held, however, that as the trial court had erroneously deducted $406 on the supposition that the bank had advanced that amount, after the mortgages were taken, that the two errors substantially offset, and refused to reverse on that ground. The question now presented by this assignment of error was not even suggested.

But, if it had been, the result must have been the same. It is conceded that this sum of $1,335.62 was actually included in the note given as part purchase of the logs, and by the bankrupt turned over to plaintiff in error, at a time when to make such payment was in violation of the statute; hence the trustee had a right to recover that sum. The trustee was entitled to recover any and all preferences received by plaintiff in error, with guilty knowledge, within the period of four months prior to June 7th, 1902, including the proceeds of any property he sold, encumbered or unencumbered, and including the insurance on the mill, which admittedly was turned over and applied on his indebtedness to the bank. The claim now made for the first time that the trustee can recover nothing except the identical money which was paid to the plaintiff in error out of the proceeds of the mortgaged property, and that it has a right to retain all payments it received as a guilty participant in a fraud upon the bankruptcy act, because the money it received cannot be identified as the proceeds of the mortgaged property, is clearly untenable.

FOURTH. That said court erred in determining that the defendant was liable in said action for the value of those certain notes and moneys it had received, for which the judgment in said action was rendered against it, as a preference under the provisions of said bankrupt act, although the plaintiff trustee had not elected to avoid such preference by bringing suit to recover the same and had not elected to avoid such preference in any manner whatever.

This assignment is based on the supposition of a fatal variance between the proof and the complaint.

Section 2669 R. S. of Wis. provides, "No variance between the allegation in a pleading and the proof, shall be deemed material unless it shall actually mislead the adverse party to his prejudice in maintaining his actioa o defense upon its merits."

The complaint specifically alleged, not only the execution of the mortgages covering the lumber and the Cadott logs on February 20th, 1902, but further alleges: "that after said 20th of February, 1902, the bankrupt, at the special instance and request of plaintiff in error, transferred by absolute bills of sale to Waters-Clark Lumber Company all of the property mentioned and described in said chattel mortgages, together with certain other saw-logs then owned by said Young;..... that immediately on the execution of said bills of sale said Waters-Clark Lumber Company pursuant to directions by and in behalf of the bank, took possession of all the property so transferred, and thereafter sold the same and applied the proceeds to the payment of the indebtedness secured by said mortgages."

This was an allegation of a preference made by payment, as well as by giving the mortgages, and was so treated on the trial. Both sides litigated the question of recovery, not only for the value of the lumber embraced in the mortgage, but for the amount of money actually paid to the plaintiff in error, to be applied on the notes and time checks issued by the bankrupt, and which it held.

But it was immaterial how the preference was given. If through the mortgages, bills of sale, agreement or otherwise, the plaintiff in error was paid either directly by Young, or by Waters-Clark Lumber Company, who purchased his property, at any time within the prohibited period, and it received such payment with guilty knowledge, it is liable for the amount it received.

Sterns vs. Trust Co., 112 Fed., 501.
Western Tie Co. vs. Brown, 129 Fed., 728.
Schwartz vs. Bank, 117 Fed., 1.
Woolen Co. vs. Powell, 72 S. W., 723.

As stated in Western Tie Co. vs. Brown, supra, in an opinion by Judge Sanborn: *The test of a preferential transfer under the bankruptcy act is not whether the debtor has conveyed anything to the creditor, or whether the creditor has received anything from the debtor.* It is whether or not the debtor has made a transfer of any of his property to any one in any way, whereby the enforcement of the transfer will enable one of his creditors to obtain a greater percentage of his debt than any other creditor. So the question is not whether the insolvent transferred any of his property directly to the Tie Company, but whether any transfer of his property was made in the time and manner denounced by the bankruptcy law, so that that company was enabled to secure a larger percentage of its claim against him than other creditors. One of the main purposes of the bankruptcy law is to distribute the unexempt property which the bankrupt has four months before the filing of a petition in bankruptcy, share and share alike, among his creditors."

So in this case, it is wholly immaterial whether any property was transferred by mortgage or otherwise to the plaintiff in error. If the bankrupt in any way transferred to any person any of his property, under any arrangement, the result of which was that the plaintiff in error was to receive the proceeds or some part of it, and equal provision was not made for all his other creditors, it was, as to it, an unlawful preference, and can be recovered by the trustee, who demanded judgment before the trial court for all that was paid to the plaintiff in error regardless of whether it was paid to it on time checks or general indebtedness, believing that it was the province of the bankruptcy court in the final distribution, to declare what were preferred and what were not preferred claims, instead of the state court. This was denied, the state court refusing to give judgment for any amount except what plaintiff in error actually received, and applied upon what the court was pleased to call non-liquidable debts. Under this state of the record, it is submitted that the trustee has exhausted every means in his power to avoid the preference given, and the whole of it.

Courts have been frequently called upon to pass upon devices and schemes like the one at bar, intended to cover illegal preferences, and uniformly hold that any scheme resulting in one creditor receiving, directly or indirectly, any part of his debt, in excess of the amount other creditors of the same class would receive by an equal disaribution, is void.

In re. Stein, 22 Fed. Cases, 1232.
Fleming vs. Andrews, 3 Fed., 632.
In re. Beerman, 112 Fed., 664.
Bardes vs. Bank, 98 N .W., 284.
Hackney vs. Bank, 98 N. W., 412.
Hackney vs. Hargrave, 98 N. W., 626.
In re. Belding, 116 Fed., 1016.

In most of these cases the claim was made that a creditor could be held only for property which was actually transferred to him, and that as in most of them, the property had been rtansferred to some third person, who was not a creditor, under some arrangement by which the creditor was to receive a part of the proceeds, such creditor could not be held guilty of receiving an unlawful preference. But the courts have uniformly held that a transfer of property to a third person, the result of which was to enable some creditor to get a portion of the proceeds, in violation of the bankruptcy act, was in legal effect a transfer to the creditor, and that such creditor could be held liable for the value of the property transferred.

Fifth, That said court erred in determining that in order to ascertain whether or not the defendant was liable for having received a preference under the provisions of said bankrupt act, it was immaterial whether or not the defendant and the other creditors of the bankrupt were creditors of the same class, and said court erred in refusing to reverse said judgment, because of the error of said circuit court in charging the jury that all the creditors of said bankrupt were creditors of the same class.

What was said by the Supreme Court of Wisconsin sufficiently answers this assignment. (p. 365 record.)

In addition it appears by the undisputed evidence in the case that plaintiff in error held unsecured notes and non-lien-

able time checks of the bankrupt, amounting to $24,348.52. (pp. 74-75 record) of which it was paid by Waters-Clark Lumber Company the amount for which judgment was entered, $6,254.99, leaving a balance due the plaintiff in error of substantially $17,000. It is further established by the undisputed evidence by the records of the bankruptcy court, that there were other unsecured creditors, with claims aggregating something over $12,000. (pp. 67-68 record). The inevitable result of the bankrupt paying plaintiff in error or any other creditor any sum, or transferring to either of them any property, without making a like provision for the other unsecured creditors, would be to give to the persons so paid, or to whom such property was transferred, a preference over such other creditors who were of the same class. A person who is not possessed of a sufficient amount of property, at a fair valuation, to pay all his debts, cannot pay any one, without giving a preference, unless the one paid held security, and the payment was realized out of the encumbered property. Under this state of the evidence the charge of the court complained of is correct although wholly immaterial, and the state court so held.

Schwartz vs. Bank, 117 Fed, 1.

Livingston vs. Heinneman, 120 Fed., 186.

SIXTH, That said court, in determining that the defendant had reasonable cause to believe that a preference was intended, erred in the construction of said bankrupt act in the following respects:

(a) In determining that where the effect of the enforcement of a transfer from an insolvent debtor is to enable any of his creditors to obtain any portion of his debt, and that transfer is followed within four months by the commencement of bankruptcy proceedings, that such a transfer would necessarily enable such creditor to obtain a greater percentage of its debt than other creditors of the same class, and would constitute a preference within the meaning of said bankrupt act.

In the state court, plaintiff in error contended with apparent seriousness, that a person who was hopelessly insolvent, owing thousands of dollars of unsecured debts to a large

number of different creditors, could transfer or make a payment to one of such unsecured creditors, without such transfer or payment necessarily constituting a preference; and to sustain such theory, plaintiff in error presented to the state court, a remarkable computation, from which it appeared that the bankrupt owed plaintiff in error substantially $25,000, and was paid out of the proceeds of the property transferred to Waters-Clark Lumber Company, a sum equal to 26½ per cent of its unsecured indebtedness. It was then insisted that plaintiff in error having received a preference (thereby admitting the whole contention), would not be permitted to participate with other creditors as to the remaining portion of its indebtedness. The remaining portion of the bankrupt's unsecured indebtedness, eliminating the balance due to plaintiff in error, was then computed, and by comparison with other property which plaintiff in error insisted was available for the payment of such debts, it was computed that the other creditors would receive more than 26½ per cent on their claims.

This computation is stated in brief of plaintiff in error on motion to dismiss writ at page 3, and when analyzed shows the following:

At the time of the transfers in question the bankrupt owed plaintiff in error on unsecured indebtedness	$24,348.52
All other unsecured debts that bankrupt was then owing	7,948.81
Total indebtedness admitted by computation	$32,297.33
Counsel further state (in brief p. 3) that the assets of the bank at that time consisted of the value of the property left to pay other creditors, (this was disputed)	$14,680.00
And amount of his interest in the logs and lumber, which was paid to the bank	6,254.99
Total assets	$20,934.99

It thus appears from the brief of counsel that the bankrupt at the time the transfers were made, had property of the

value of $20,934.99, with which to pay his unsecured creditors, amounting to $32,297.33, and yet, it is insisted that $6,254.99 of these assets could be turned over to one creditor without giving that creditor a preference.

In the state court defendant in error demonstrated by like computation, that after the bank had been paid the amount for which judgment was taken, and that had been credited upon its unsecured indebtedness, the bankrupt still owed unsecured debts aggregating $24,843.43 (not including $18,000 due to labor) which under the undisputed evidence the officers of the bank knew all about, and in addition many thousands of dollars, of which the bank's officers disclaimed any knowledge, and that the value of all available property which the bankrupt still had, giving it the most favorable construction possible amounted to only $4,780 or about 19 per cent; whereas the bank had already been paid 26½ per cent of its claim. The jury and trial court on the evidence found against plaintiff in error on the conflict of evidence as to the value of the remaining property consisting of accounts receivable old logging outfit, etc.

As stated by the Supreme Court of Wisconsin in its opinion, (p. 309 record): "It is too clear to admit of reasonable controversy, that if a creditor receives security for the payment of his claim....and yet have the same standing as other creditors for the balance of his claim as he would have if the transaction were valid, the effect would necessarily be to give such creditors an undue advantage and a preference within the meaning of the bankruptcy act."

Toff et. al. vs. Martin, 13 Wallace, 46.

The whole question, however, as to whether or not the officers of the bank had reasonable cause to believe that Young intended by the sale to give it a preference, or reasonable cause to believe that it was getting a preference, is purely a question of fact for the jury and the jury have found, on ample evidence, against plaintiff in error.

Crittenden vs. Barton, 69 N. Y. Sup. 559.

Giddings vs. Dodd, 10 Fed., 338.

In re. Forsyth, 9 Fed. Cas., 465.

In re. McDonough, 16 Fed. Cas., 68.
In re. Eggert, 102 Fed., 735.
In re. Graham, 110 Fed., 135.
Hackney vs. Clark Co., 94 N. W., 822.
Bardes vs. Bank, 98 N. W. 28.
Decisions of this court cited in brief on motion to dismiss.

(b) In determining that although the effect of the enforcement of the transfer in question did not operate to give the defendant a greater percentage of its debt than other creditors of the same class, that, nevertheless, such transfer constituted a preference within the meaning of said bankrupt act.

The Supreme Court of Wisconsin did not so hold. On the contrary, that court properly held that whether such instruction was right or wrong, did not in any way concern this case.

We have before shown that there were at least *other* creditors in the same class as plaintiff in error, and this would be sufficient. If there was but one other creditor, whose debt was unsecured, the bankrupt could not pay the plaintiff in error a dollar, or transfer to it, directly or indirectly, any part of his property, while he was insolvent and within four months of filing his petition, without making like provision for that other creditor, without such payment or transfer constituting a preference under the bankruptcy law. The plaintiff in error evidently wishes this court to treat it as in a class by itself, because it was the only one of the many creditors of the bankrupt who procured security for its indebtedness, in violation of the bankruptcy act; and then asks this court to reward its violation of the law by permitting it to keep all that it received, because being the only creditor of that class, it cannot be said to have received a larger percentage of its claim than other creditors of that class. The contention seems to answer itself.

(c) In determining by such rules of construction of said bankrupt act, that the evidence was sufficient to sustain the finding that the defendant had reasonable cause to believe that a preference was intended, whereas, under proper construction of said bankrupt act, it appears by the uncontroverted evidence

that said defendant did not have reasonable cause to believe that a preference was intended.

The opinion of the Supreme Court of Wisconsin is a sufficient answer to this contention. (p. 308 record.)

SEVENTH, That said court erred in determining that the defendant, having received a preference which was voidable by the trustee, was for that reason liable in said action for the full value of such preference so received, in an amount in excess of what was necessary to pay all the other creditors of said bankrupt.

The Supreme Court of Wisconsin did not hold that the turstee was entitled to recover an amount in excess of what was necessary to pay all the other creditors of said bankrupt, for the reason that such question was not before it. The judgment appealed from is for $6,254.99, while the undisputed evidence in the case shows that in addition to what the bankrupt owed the plaintiff in error, he owed other unsecured debts to an amount exceeding $10,000, as appears from the duly certified copy of records of the bankruptcy court. (pp. 67-68 record.) Counsel in his brief on the motion to dismiss, at page 3, states the amount the bankrupt was owing to other unsecured creditors at $7,948.81, but section 60b of the bankrupt act provides that if a bankrupt shall give a preference and the person receiving it had reasonable cause to believe it was intended thereby to give a preference, it shall be voidable by the trustee *and he may recover the property or its value from such person.* This fixes the amount of recovery as well as the conditions of liability.

Plaintiff contended in the state court that he was entitled to recover, either the entire value of all of the property; (that is, of the logs and lumber transferred first by way of mortgage and subsequently by bill of sale;) or, he at least was entitled to recover all that was paid to plaintiff in error out of the proceeds of the property transferred, whether such proceeds were applied to pay labor liens or on general indebtedness, leaving it for the bankruptcy court to determine as to whether or not the alleged lienable claims constituted preferred claims under the bankruptcy act. All of these contentions were denied by the state court, which affirmed a judgment for the

amount, only, which was paid to plaintiff in error, and by it applied on its unsecured indebtedness. As this judgment is concededly less than the aggregate of indebtedness due to other unsecured creditors, this assignment of error is without merit.

This question does not appear in anything of record in this case and was first injected into it by the certificate of the Chief Justice of the State of Wisconsin, made and filed in this court as a supplemental return, after the motion to dismiss the writ had been made.

EIGHTH, That said court erred in determining that the defendant was liable to the plaintiff trustee for moneys required by said trustee to pay the claims of fictitious creditors whose claims were not proven by the evidence, and claims of creditors who had themselves received preferences, and in giving judgment against defendant therefor.

We do not understand what is meant by fictitious creditors or claims not proven.

The trial court of Wisconsin received in evidence a certified copy of the record of the United States District Court having jurisdiction of the bankruptcy proceedings, from which it appeared that there had been filed and allowed claims aggregating $12,265.56, of which amount about $2,500 was in part secured, and about $200 preferred claims, leaving between nine and ten thousand dollars of unsecured and unpreferred indebtedness. (pp. 67-68 record.) This record was properly admitted.

Hackney vs. Hargrave, 92 N. W. 626—also 99 N. W. 675.

In addition the state court received in evidence certified copies of claims filed by Sallie F. Moon for $6,000, Valley Lumber Company for $2,500, Eau Claire Grocer Company for $1,496.68, Eau Claire Mill Supply Company for $373.37, Knapp Stout & Co. Company for $233.30, McDonough Manufacturing Company for $142.54, Daniel Shaw Lumber Company for $100, Alex Lentz for $150, etc. (pp. 188 to 200 record.) In addition to this documentary evidence the bankrupt Young testified in detail to his indebtedness on February 20th, 1902, (pp. 103 to 107 record.) and which in

the aggregate amounted to something over $10,000, exclusive of notes and time checks.

No evidence was offered or received tending to show that any of these creditors "had themselves received preferences," and reference to such preferences in the eighth assignment of error is an uncalled for suggestion not warranted by anything found in the record.

NINTH, That said court erred in refusing to limit the recovery against the defendant to such sum as should be sufficient after the payment of expenses and costs to pay all the other creditors of the bankrupt, whose claims were provable and proven, and entitled to be allowed under the provisions of the bankrupt act.

As before stated, the amount of the judgment is wholly inadequate to pay the creditors mentioned in this assignment.

TENTH AND ELEVENTH, What has been said is sufficient answer to these assignments. The Supreme Court of Wisconsin in affirming the judgment, did not pass upon the questions involved in the seventh, eighth and ninth assignments of error. Judgment was affirmed without the necessity of doing so.

REPLYING TO BRIEF OF PLAINTIFF IN ERROR.

Since writing the foregoing, we have been furnished with a copy of brief of plaintiff in error, and will discuss each proposition in its order:

FIRST, *Jurisdiction of this court.*

The cases cited have been hereinbefore discussed.

SECOND, *That the trustee has not elected to avoid nor brought suit to recover any preference that the bank may have received, and the judgment rendered therefor cannot be sustained.*

Under this proposition it is urged that the state court erred in overruling a demurrer to the complaint, for failure to allege that a demand was made by the trustee before commencing suit. But a demand is not necessary.

4 Cyc, 243.
Bull vs. Houghton 65 Cal., 422.
Cramton vs. Marble Co., 1 L. R. A. 120.
Goldberg vs. Harlan, 67 N. E. 707.
Barbour vs. Priest, 103 U. S. 293.
Toff vs. Martin, 13 Wallace, 46.

In Goldberg vs. Harlan, supra, the precise question was raised and it is there said: "No demand for a restoration of the goods or their value was necessary before the commencement of the action. The whole transaction under the bankruptcy act was unlawful, and in such cases demand is unnecessary."

The evidence, however, conclusively shows that demand for the return of this property or its value was made upon plaintiff in error before this action was commenced. (120-125 record.)

It is further urged that the preference received by the bank for which judgment was recovered, was not the preference alleged, nor the one to recover which, suit was brought. This is based upon the erroneous assumption that plaintiff in error could not be held to have received a preference, unless it was shown that the mortgaged property actually went into its possession. The cases cited at pages 35 and 37 of this brief, conclusively show that a sale by a bankrupt while insolvent, to a third person, not a creditor, under an arrangement by which the purchase price or some part of it is to go to some one of his creditors, is giving a preference to such creditor, and is, in legal effect, a transfer of the property, to that extent, to the creditor receiving such preference. But in this case the complaint alleged not only the transfer of certain of the bankrupt's property to plaintiff in error by way of mortgage, but alleges that subsequently the bankrupt conveyed or transferred the mortgaged property to the Waters-Clark Lumber Company "with the understanding and agreement with plaintiff in error and the bankrupt that it, the Waters-Clark Lumber Company, would account to plaintiff in error for the proceeds of the property transferred, to the amount of its indebtedness." (11 record.)

This transfer was made to the Waters-Clark Lumber Company before plaintiff in error had started to foreclose the mortgages on the logs or the notices of sale had been posted. (p. 44 record.) All this was done, not only at the solicitation of plaintiff in error, but with the express understanding that no part of the consideration should be paid to the bankrupt, but that Waters-Clark Lumber Company should pay the claims held by the bank. (p. 233 record.)

Counsel for plaintiff in error seem to admit that it received a preference, but insist that the preference consisted of notes and moneys, and not logs and lumber, and for this reason ask this court to reverse the decision of the state court; but section 60b of the bankruptcy act provides that the trustee may recover the actual property transferred or its value. In this case, before the trial of the action, plaintiff in error had foreclosed its mortgage, by directing the bankrupt as mortgagor, to execute bills of sale of the mortgaged and other property to the Waters-Clark Lumber Company, under an arrangement by which the Waters-Clark Lumber Company would pay off the claims the bank and others held against the logs and apply any excess to the general indebtedness of the bank. This was a mere means of foreclosure. The notes given simply measured the portion of the value of the property which was deemed to be in excess of the labor liens, and which were turned over to the bank. The complaint alleged that the Waters-Clark Lumber Company disposed of the property and paid the proceeds to plaintiff in error, and judgment has followed this allegation. True, defendant in error in the state court prayed judgment for a much larger sum, namely, the value of the property, regardless of the amount actually received by the bank, and insisted that to be the true measure of damage to the trust estate. The fact that the state court adopted a different measure of damages, and one more favorable to plaintiff in error, is now urged as a reason why this court should reverse the judgment of the state court.

THIRD, *That is was error to instruct the jury that creditors were all of the same class.* (See pp. 37 and 38 defendant in error's brief.)

FOURTH, *That the state supreme court erred in its construction of the word "preference."*

It is argued that because the preference received by the bank amounted to only 26½ per cent of its claim, that in determining whether this preference did or did not constitute a preference, the unpaid 73½ per cent of the bank's claim should be treated as paid, and investigation made to determine as to whether the remaining unsecured indebtedness, amounting to $7,406.90 (as stated by counsel, brief, p. 33), would be reduced an equal amount out of the proceeds of the bankrupt's remaining property. Why the remainder of the bank's claim should be eliminated, is not stated, except that the bank having received a preference, it would not be permitted to pro rate with the other creditors. This assumes in advance that the payment of 26½ per cent constituted a preference; for otherwise, the bank could file a claim for the remaining 73½ per cent of its indebtedness. But the value of the remaining property of the brankrupt was shown on the trial to be practically nothing. The accounts receivable stated by counsel to be of the value of $4,000 were shown to be practically worthless. (pp. 110-111 record.) The wagon, sleighs and camp outfits stated by counsel to be worth $2,000 were sold by the trustee for less than $300. The $1,500 in lath and shingles never existed, nor did the $2,000 in cash. It is sufficient to say that the record discloses a hopeless conflict in the evidence, as to the value of the property owned by the bankrupt after the transfers in question, but it is undisputed that it consisted of property useful only for saw mill purposes, and that bankrupt's mill had burned, so that he had no use for such property.

SIXTH, *That the trustee represents creditors who are entitled to participation in the distribution of the bankrupt estate, and no recovery can be had except for their benefit.*

The complaint is criticised because it did not allege that any claims had been filed in the bankruptcy court, and it is urged that the demurrer to the complaint should have been sustained for this reason. The complaint alleges: "That there is no other property in the possession of plaintiff as such trustee, or belonging to the said John H. Young, out of

which the other creditors of said Young could be paid, and that it is necessary to enable plaintiff to pay anything to the other creditors, to recover from said defendant the value of the property so by it appropriated by means of said transfers." (12 record.)

It is further urged that the recovery in actions of this character must be limited to an amount sufficient to pay the creditors whose claims were proven and entitled to be proven in the bankruptcy court, but section 60b of the bankruptcy act, 1898, provides the measure of recovery, leaving it for the bankruptcy court to determine what creditors are entitled to participate and in what amounts. This assignment was not discussed in the opinion of the Supreme Court, and appears in this record only by the certificate of the Chief Justice (p. 315), and such certificate is only to the effect that such questions were considered, and not that they were material or necessarily involved in the decision.

In conclusion it is respectfully submitted that the writ of error should be dismissed; or if this court shall be of opinion that it has jurisdiction to review the judgment appealed from, then that such judgment should be affirmed.

Respectfully submitted,

C. T. BUNDY,

R. P. WILCOX,

Attorneys for Defendant in Error.

Supreme Court of the United States.

No 163.—October Term, 1906.

Eau Claire National Bank, Plaintiff in Error,
vs.
Ralph W. Jackman, as Trustee of the Estate of John H. Young, a Bankrupt.

In error to the Supreme Court of the State of Wisconsin.

[February 25, 1907.]

This action was brought by defendant in error, hereafter called the trustee, in the Circuit Court of Eau Claire County, State of Wisconsin, against the plaintiff in error, hereafter called the bank, under section 60*b* of the bankrupt act of 1898, to recover the value of property which, it is alleged, was transferred by the bankrupt to the bank, for the purpose of giving the latter a preference over other creditors. Judgment was recovered by the trustee, which, on appeal, was affirmed by the Supreme Court of the State. 125 Wis. 265. Thereupon this writ of error was sued out.

The complaint of the trustee alleges that on the 7th of June, 1902, John H. Young duly filed his petition in bankruptcy in the United States District Court for the Western District of Wisconsin, pursuant to the act of Congress, and was on said day duly declared a bankrupt. Subsequently defendant in error was duly elected and appointed by the creditors of the bankrupt as trustee in bankruptcy, and duly qualified as such trustee.

The plaintiff in error is and was at all the times mentioned in the complaint a national bank. Young, during the four months immediately preceding the filing of his petition, was the owner and in possession of certain lumber, shingles, and lath, located at Cadott, Chippewa County, Wisconsin, and certain logs in or near the Yellow River and Chippewa River in Chippewa County, which were reasonably worth the sum of thirty-five thousand dollars. The value of all other property owned by him did not exceed the sum of $500.

On the 10th of February, 1892, Young was wholly insolvent, and owed debts which largely exceeded the value of his property, which fact was well known to him and the bank. The aggregate amount of his indebtedness exceeded the sum of $40,000, and the value of his property was substantially $35,000. He was indebted to the bank in the sum of $27,000 for moneys borrowed from time to time for a period of about two years

previous to that time. On said day Young executed to the bank a chattel mortgage on 2,100,000 feet of saw logs, to secure the sum of $15,900, then owing from him to the bank, and also executed a chattel mortgage, transferring 1,000,000 feet of lumber, about 600,000 shingles and about 200,000 lath, to secure the sum of $11,100, owing by him to the bank. This indebtedness existed long prior to said mortgages, and the property transferred constituted substantially all of the property then owned by Young not exempt from execution, which facts were well known by him and the bank. The effect of the foreclosure of the mortgages would be to enable the bank to obtain a much larger percentage of its debt than would the other creditors of Young in the same class as the bank. The mortgages were given by Young and taken by the bank for the sole purpose of hindering and delaying the other creditors, and were executed and received for that purpose, and the bank at the time of their execution had reasonable cause to believe that they were given with the intention to give it a preference over other creditors.

The Waters-Clark Lumber Company is a corporation of the State of Minnesota, and D. S. Clark is the president thereof and also a director in the bank, and W. K. Coffin is the cashier of the latter. On or about the 10th of March, 1902, Coffin, acting for the bank, requested Young to transfer to the lumber company, for the benefit of the bank, all of the property embraced in the mortgages, together with certain other property. Pursuant to such request Young did, on or about the 10th of March, 1902, transfer, by absolute bills of sale, to the lumber company all of the property described in the mortgages, and other saw logs owned by him. The property transferred was reasonably worth the sum of $35,000. Immediately on the execution of the bills of sale the lumber company, acting pursuant to the directions by and in behalf of the bank, took possession of the property transferred, and thereafter sold the same and applied the proceeds to the payment of the indebtedness secured by the mortgages. At the time the bills of sale were made the lumber company and the bank thought the property transferred constituted all of the available assets of Young, and that the result of such transfer and the appropriation of the proceeds thereof would result in the other creditors of Young losing all of his indebtedness to them. The lumber company, acting as vendee of said property, was in reality acting as trustee for the bank, and made such pretended purchase with the understanding and agreement with the bank and Young that it would account to the bank for the proceeds of the property transferred to the amount of his indebtedness, and that any sums realized in excess of his indebtedness should be paid to Young. The bills of sale were not executed in compliance with the statutes of the State. Except as to the agreement to pay said indebted-

ness, no consideration was paid by the lumber company for the property, and at the time of the transfer of the property nothing was paid to Young therefor. By reason of said transactions the bank within four months appropriated to the payment of its claims substantially all of the property of Young, which at said time was and has been ever since worth $35,000. There is no other property in the possession of the trustee, belonging to Young, out of which his other creditors can be paid.

The bank demurred to the complaint on the following grounds: The court had no jurisdiction of the subject of the action; the trustee had no legal capacity to sue, in that the complaint did not allege that authority or permission was given him to bring suit; defect of parties, in that Young and the lumber company were not made parties; and that the complaint did not state a cause of action. The demurrer was overruled, and the bank, availing itself of the permission granted, filed an answer, in which it admitted its corporate character and that of the lumber company, and the execution of the mortgages and the bills of sale, and that the instruments were not executed in the manner provided by the statutes of the State. It denied all the other allegations of the complaint, and alleged that a portion of the proceeds of the sale of the property was paid to the bank to discharge valid and existing liens which it held against the property. And it alleged that the mortgages were given for a good and valuable consideration, and that neither of them nor the payments to the bank were made or received for the purpose of giving the bank a preference over other creditors of Young, "contrary to the provisions of the bankruptcy laws," and "that, prior to the commencement of this action, the plaintiff commenced an action in this court against said Waters-Clark Lumber Company to recover from said Waters-Clark Lumber Company the purchase price of logs and other material sold by said Young to said Waters-Clark Lumber Company, and thereby elected to treat and consider said contract between said Young and said Waters-Clark Lumber Company as legal and valid, and elected to look to and hold the said Waters-Clark Lumber Company, instead of this defendant, as liable to said trustee for all sums of money which the said plaintiff may be entitled to recover on account of the transactions mentioned in plaintiff's complaint."

Questions were submitted to the jury covering the issues in the case, except the value of the property, which, by stipulation of parties, was reserved for the court. The jury in response to the questions found that at all the days mentioned in the complaint the property transferred at a fair valuation was insufficient to pay Young's debts; that the lumber company, acting for the bank and pursuant to the arrangement between it and the bank, took the legal title to the lumber and logs for the benefit

of the bank under an agreement with it and Young to account to the bank for a portion of the proceeds; that it was the intention of Young, by the execution of the mortgages and the transfer of the property, to give the bank a preference, and that the bank and officers and agents had reasonable cause to believe that Young intended to give it such preference and to enable it to obtain a greater percentage of its indebtedness than any other of his creditors of the same class would be able to obtain.

The court found that the lumber which was included in the bank's mortgage was worth $3,452.85, and that a note for that sum and value was given by the lumber company to Young and by him transferred to the bank; that the Cadott logs, included in the mortgage and sold by Young to the lumber company, were worth $10,077.84; that the up-river logs not included in the mortgage, but sold to the lumber company by Young, were worth $11,055.84, and that a note which was given as the net proceeds of the sale of both quantities of logs over and above certain labor liens was worth $2,508.14. This note was given by the lumber company to Young and transferred by him to the bank. The trustee contended in the trial court that he was entitled to recover for the entire value of the logs and lumber, and that no credit should be allowed the bank for the sums paid by it to discharge certain liens on the property for labor claims and unpaid purchase money. The court rejected the contentions and gave judgment for the trustee in the sum of $6,254.99. In this sum was included the value of the notes.

The assignments of error are that the Supreme Court erred in the following particulars: (1) In determining that the complaint stated a cause of action. (2) In determining that the bank was liable for the value of the logs and lumber to the extent of the chattel mortgage interest of the bank therein. (3) In determining that the bank was liable for having received a preference contrary to sections 60*a* and 60*b* of the bankrupt act of July 1, 1898, as "a portion of its chattel mortgage interest in said logs, the sum of $1,335.62 as the proceeds of the sale of the portion of said logs known as the 'up-river logs,' on which logs said defendant never held any chattel mortgage and which logs were never transferred to said defendant." (4) In determining that the bank was liable for the value and moneys it received as a preference, although the trustee had not elected to avoid such preference by bringing suit to recover the same and had not elected to avoid such preference in any manner. (5) And in holding that in determining a question of preference it was immaterial under the bankrupt act whether the bank and the other creditors were of the same class, and in refusing to reverse the judgment because of the error of the Circuit Court in charging the jury that all of the creditors were of the same class. (6) In its construction of the bankrupt act in the following par-

ticulars: (*a*) In holding that a transfer made within four months of the bankruptcy proceedings, which enabled a credior to obtain any portion of his debt, constituted a preference. (*b*) That, although the effect of the transfer in question did not operate to give the bank a greater percentage of its debt than other creditors of the same class, such transfer constituted a preference. (*c*) In determining, by such rules of construction of the bankrupt act, that the evidence was sufficient to establish that the bank had reasonable cause to believe that a preference was intended. (7), (8), (9) In holding that the bank was liable for the full value of the preference received in an amount in excess of what was necessary to pay all the other creditors of the bankrupt, and claims of fictitious creditors and claims of creditors who had themselves received preference, and in not limiting the recovery to such sum as would be sufficient to pay the claims of creditors whose claims were provable. (10), (11) In affirming the judgment against the bank and not rendering judgment for it.

Mr. Justice McKENNA, after stating the case as above, delivered the opinion of the Court.

A motion is made to dismiss on the ground that the record presents nothing but questions of fact. It is contended that neither in the pleadings of the bank nor in any way was any right, privilege or immunity under a Federal statute specifically set up or claimed in the State courts. The only questions presented by the pleadings, it is urged, were, did the bankrupt give the bank a preference, and did the bank accept it with reasonable grounds to believe that a preference was intended? The Supreme Court, however, considered the pleadings to have broader meaning, and answered some of the contentions of the bank by the construction it gave to the bankrupt act. The case, therefore, comes within the ruling in *Nutt* v. *Knut*, 200 U. S. 12. It was there said: "A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States, may be fairly held within the meaning of section 709, to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary." See also *Rector* v. *City Deposit Bank*, 200 U. S. 405.

On the merits of the case we start with the facts established against the bank, that the property of Young, at the time he executed the chattel mortgages and when he executed the deed to the lumber company, at a fair valuation was insufficient to pay his debts, and that by the execution of those instruments and the transfer of his property effected thereby, he intended to give the bank a preference over his other creditors, and that

the bank had reasonable cause to believe that he intended thereby to give it a preference, and to enable it to obtain a greater percentage of its debt than any other creditor of Young of the same class. These, then, are the prominent facts, and seemingly justified the judgment. Against this result what does the bank urge? It urges, first, that there is included in the judgment the sum of $1,335.62, the net proceeds of the sale of certain logs, called the "up-river logs," which, it is contended, were not covered by either of the mortgages, and that the Supreme Court, in its opinion, apparently supposed that those logs were covered by the mortgages, and erred in giving judgment therefor. This is a misunderstanding of the opinion. While the court did not explicitly distinguish between the mortgages and the deed to the lumber company, we think it is clear that the court regarded the deed, and what was to be done under it, as the consummation of the "legal wrong," to use the language of the court, which went back to the time of the mortgages. In other words, that the up-river logs as well as the other property were conveyed to the lumber company for the purpose of giving a preference to the bank.

The bank also attempts to urge against this conclusion the different views expressed by the trial court and the Supreme Court upon the finding of the jury as to the relation which the lumber company stood to the bank. The jury found, in answer to questions 4 and 5, that the lumber company, acting for the bank, took the legal title for the benefit of the latter under an agreement with Young and the bank to account to it for a portion of the proceeds. The trial court said that this was not a finding "that the lumber company was the agent of the bank." The Supreme Court thought that the jury "pretty clearly decided" that the bank was a principal and the lumber company "a mere agent" in the matter. It is true the Supreme Court immediately added: "However, the evidence seems to clearly establish that the lumber company purchased the property from Young in the regular course of business, without any understanding with the defendant, other than that its interest in the property as mortgagee and claimant under numerous statutory labor liens should be recognized, and the equivalent thereof in money delivered to it out of the proceeds." And this was deemed sufficient to accomplish the preference which Young intended to give the bank. The court passed over as not important the distinction between the notes given by the lumber company to Young as the purchase price of the lumber.

These minor matters out of the way, we come to the more important contentions of the bank. These contentions are expressed in the form of questions, the first of which is: "Can a trustee in bankruptcy, under the provisions of the bankruptcy act, lawfully maintain a suit to recover the value of a voidable preference without first electing to avoid such prefer-

ence by notice to the creditor receiving such preference, and by demand for its return?"

It is urged to sustain this contention, that a preference is not void but voidable. And voidable solely at the election of the trustee, who must indicate a purpose to do so. The argument is that a preference being voidable, the creditor receiving it is not in default until he fail to or refuse to surrender it on demand. Prior to that time his possession is rightful and lawful, and he is not guilty of any wrong, tort or conversion. And the demand, it is further urged, must be made before suit, for, it seems also to be contended, that the creditor must be given an opportunity to exercise the election given him by subdivision *g* of section 57 of the bankrupt act to surrender the preference and prove his claim.. We say, "seems to be contended," because we are not clear that counsel for the bank claims that the rights of a creditor under 57*g* depend upon the action of the trustee. Counsel say:

"The bankrupt act, therefore, contemplates that the trustee shall exercise his election as to whether or not he shall avoid a preference, and it also contemplates that the creditor receiving such alleged preference must exercise an election as to what course he shall take. Until the trustee exercises his election, no cause of action accrues. The creditor is not called upon to elect what course he shall take until the trustee has acted, It therefore follows that the trustee should exercise his election and make his demand before commencing suit."

And this, it is argued, is more than a mere question of State practice, and involves the question whether the property consisting of the alleged preference is any part of the trust estate. If it be intended by this to assert that the action of the creditor under 57*g* is to wait upon or depends upon the action of the trustee under section 60, we do not assent, and nothing can be deduced, therefore, from the supposed relation of those sections as to the necessity of a demand before suit. We do not see how such a demand can even be an element in the consideration of the creditor, whether he will surrender the preference and prove his debt. The right of surrender exists as well after suit as before suit. *Keppel* v. *Tiffin Savings Bank*, 197 U. S. 356.

Independently of such considerations, whether the election by a trustee to avoid a preference should be exercised by a demand before suit or can be exercised by the suit itself might be difficult to determine if it were necessary on the record. 1 Chitty on Plead. 176, and cases cited; *Shuman* v. *Fleckenstein*, Fed. Cases, No. 12826; *Brooks* v. *McCracken*, Fed. Cases, No. 1932; *Wright* v. *Skinner*, 136 Fed. Rep. 694; *Goldberg et al.* v. *Harlan*, 67 N. E. 707. But we do not think it is open to the bank to urge the first. The bank, it is true, demurred to the complaint and urged as a ground of demurrer the absence of an allegation of a demand. But

the bank did not stand on the demurrer. It answered, and not only traversed the allegations of the plaintiff, but set up an independent defense, and showed that a demand would have been unavailing, and a demand is not necessary where it is to be presumed that it would have been unavailing. *Davenport* v. *Ladd*, 33 Minn. 545; *Bogle* v. *Jordan*, 39 Kan. 31. Besides, it appears that a demand was made before suit. In determining from what date interest should be given the trial court said: "There is evidence of a demand, but I think only a short time elapsed until action was commenced, so that it will make little difference whether interest is computed from the time of the demand or the commencement of the action."

The trial court instructed the jury substantially, in the words of subdivision *a* of section 60 of the bankrupt act, as to when a debtor should be deemed to have given a preference, and, in explanation of the intention of the debtor, said to "intend to prefer would be to make a transfer for the purpose of enabling the bank to obtain a greater percentage of its debt than any other debtors of the same class." And, defining this class of creditors, said further, "so far as creditors' rights are involved in this action, they are all of the same class, by which is meant they would receive the same percentage of their claims. Claims for taxes or wages within certain times so as to be preferred would be of a different class. But claims of general creditors, like those approved in the Young bankruptcy proceedings, are all of the same class." The bank excepted, and assigned as error the charge that all of the creditors were of the same class. Disposing of the assignment the Supreme Court said: "Whether that is right or wrong does not seem to in any way concern the case. The action, as we have indicated is simply one in trover to recover the value of property which, as is alleged, was, in fraud of the bankrupt act, wrongfully converted by defendant to its own use. Whether there was one or more classes of creditors, and in what manner the property sought to be recovered would, if the suit were successful, be administered, did not vary in the slightest degree the legal rights of the plaintiff. If the property was obtained by the defendant in fraud of the bankrupt act, plaintiff was entitled to recover the same, and this is the only question involved."

The bank contests this view, and contends that, if accepted, "it would be impossible to ascertain whether or not the preference had been received without first determining the question of whether the enforcement of the transfer would enable the bank to recover a greater percentage of its debt than other creditors of the same class." But there is a question of fact to be considered. It was a question of fact what claims were proved against the estate. At the trial the learned judge who presided described

them in his instructions as claims of general creditors. In his memorandum opinion he said that from his minutes and the statements of the evidence in the briefs of counsel he was inclined to believe that the point was not well taken, and that the evidence did not show that the effect of the enforcement of the transfer would be to enable the bank to obtain a greater percentage of its debt than other creditors of the same class. The bank, in its brief in this court, says, "certain other claims were filed and allowed in the bankruptcy proceedings as preferred claims. These were probably claims for wages after the time of the transfers in question." In the list of claims referred to some only are marked preferred. But, granting that they all were, they were represented by the trustee.

The other questions propounded by the bank are based on the sixth assignment of error. We will not examine the arguments of counsel for the bank in detail. Their fundamental contention is that the transfers to the bank were not invalid as a preference if their enforcement would not operate to give the bank a greater percentage of its debt than other creditors of the same class would receive. And such, it is further contended, was not the result, and it is intimated that claims of possible and fictitious creditors were in effect considered. But this contention encounters the facts found by the jury and the trial court. We have already seen what, in the opinion of the trial court, the evidence established as to the effect of the transfers, and the jury found that Young was insolvent at the time they were made, and that the purpose of their execution was to give the bank a preference and to enable it to obtain a greater percentage of its debt than other creditors of Young of the same class. These findings were not disturbed by the Supreme Court, and we must accept them as stating the facts established by the evidence, although counsel seem to invoke an examination by us of the record against them. Taking them as true, they show a case of preference and grounds to set it aside. The bank also contends, in effect, that in such suit the validity of all other claims against the bankrupt can be litigated and whether they have received voidable preferences and have not been required to surrender them. The broad effect of the contention repels it as unsound. To yield to it would transfer the administration of a bankrupt's estate from the United States District Court to the State court.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.